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BEFORE THE ARIZONA CORPORATI

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3 IN THE MATTER OF THE APPLICATION)
4 OF JOHNSON UTILITIES, L.L.C., DBA)
5 JOHNSON UTILITIES COMPANY FOR AN)
6 INCREASE IN ITS WATER AND)
7 WASTEWATER RATES FOR CUSTOMERS)
8 WITHIN PINAL COUNTY, ARIZONA.)

DOCKET NO.
WS-02987A-08-0180

EVIDENTIARY
HEARING

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10 Date: April 24, 2009

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 100 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:00 p.m., on the 23rd day of
6 April, 2009.

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8

9 BEFORE: TEENA WOLFE, Administrative Law Judge

10

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14 Certificate No. 50582

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1 ALJ WOLFE: Good morning and welcome back to the
2 Commission.

3 Are there any procedural matter that the parties
4 want to address this morning?

5 MR. CROCKETT: Good morning, Your Honor.
6 Jeff Crockett appearing on behalf of the applicant,
7 Johnson Utilities.

8 The parties have had a discussion this morning,
9 and I think there is an agreement that we would like to
10 proceed with the direct testimony and cross-examination of
11 RUCO witness Rodney Moore this morning since he will be on
12 vacation after today and we want to make sure we are able
13 to get through his testimony.

14 ALJ WOLFE: Okay.

15 MR. CROCKETT: So we would like to shift over to
16 Mr. Moore this morning and then getting back to
17 Mr. Tompsett later today.

18 ALJ WOLFE: Okay. And, Mr. Mannato, your request
19 yesterday was regarding examining Mr. Tompsett; right? Or
20 was it another company?

21 MR. MANNATO: That's correct. I think that is
22 probably moot at this point.

23 ALJ WOLFE: All right.

24 Mr. Pozefsky, would you like to call Mr. Moore?

25 MR. POZEFSKY: I would, Your Honor.

1 Good morning, Your Honor. Daniel Pozefsky on
2 behalf of RUCO. And at this time RUCO would call
3 Rodney Moore.

4

5

RODNEY MOORE,

6 called as a witness herein, appearing on behalf of RUCO,
7 having been first duly sworn, was examined and testified
8 as follows:

9

10

DIRECT EXAMINATION

11

12 BY MR. POZEFSKY:

13 Q Good morning, Mr. Moore. Would you please state
14 your name for the record.

15 A Rodney Moore.

16 Q And, Mr. Moore, where are you employed and in
17 what capacity?

18 A I'm a Public Utilities Analyst V, and I work for
19 the Residential Utility Consumers Office. The address is
20 1110 West Washington, Suite 220, Phoenix, Arizona 85007.

21 Q And, Mr. Moore, you are the rate analyst in this
22 matter for RUCO; is that correct?

23 A Yes.

24 Q And you prepared testimony in this matter; is
25 that correct?

1 A. Correct.

2 Q. And before you should be what is marked as RUCO's
3 Exhibit 1; is that correct?

4 A. Correct.

5 Q. And what is that a copy of, Mr. Moore?

6 A. That is my direct testimony.

7 Q. And also before you is marked RUCO's Exhibit 2.
8 What is that, Mr. Moore?

9 A. That is my surrebuttal testimony.

10 Q. And finally, before you is what is marked RUCO's
11 Exhibit 3.

12 And what is that, Mr. Moore?

13 A. That is the revised water district schedules to
14 include the operating adjustment to reflect the CAGRD
15 known and measurable 2009 and 2010 fee schedule.

16 MR. POZEFSKY: If I may, Your Honor, I would like
17 to hand that exhibit out.

18 ALJ WOLFE: Yes. Thank you.

19 Q. BY MR. POZEFSKY: And, Mr. Moore, just so we are
20 clear, Exhibit No. 3 is an exhibit that you prepared that
21 would be part of RUCO's final schedules and we have it
22 available now and you are making it available now;
23 correct?

24 A. Correct.

25 Q. And Exhibits 1, 2 and 3 were prepared by you or

1 under your direction, Mr. Moore?

2 A. Correct.

3 MR. POZEFSKY: At this point, Your Honor, I move
4 for the admission of R-1, R-2, and R-3.

5 ALJ WOLFE: R-1 and R-2 are admitted.

6 (R-1 and R-2 were admitted.)

7 Is there any objection to R-3?

8 MR. METLI: Your Honor, we did just receive that,
9 and we would not agree to object, but we would like an
10 opportunity to come back and if we have an issue, raise
11 that issue with the exhibit. We haven't looked at it.

12 ALJ WOLFE: Okay.

13 MR. POZEFSKY: No problem.

14 ALJ WOLFE: Would you like to have an opportunity
15 to look at it before you cross-examine Mr. Moore this
16 morning?

17 MR. METLI: No, Your Honor, I don't think that is
18 necessary.

19 ALJ WOLFE: Okay.

20 MR. MARKS: Your Honor, did you want to take
21 appearances?

22 ALJ WOLFE: Not necessarily, but if you would
23 like to make an appearance.

24 MR. MARKS: Don't need to. It looks like
25 everybody is the same as yesterday. Thank you.

1 Q BY MR. POZEFSKY: Mr. Moore, would you like to
2 make a very brief summary of your testimony and reply at
3 this point on your rejoinder testimony?

4 A Yes. I analyzed several Johnson Utilities's
5 proposed adjustments, and through the discovery process
6 and after the filing of the direct rebuttal, surrebuttal
7 and rejoinder testimonies, RUCO and the company still have
8 several unresolved issues.

9 These differences are, one, plant-in-service.
10 RUCO disallowed plant deemed not used and useful and/or
11 excess capacity, whereas the company requested inclusion
12 of these plant items in rate base because it was installed
13 under contractual obligations with the developer.

14 Number two is contributions in aid of
15 construction, CIAC. RUCO regarded all CIAC as reductions
16 to rate base, whereas the company proposed a decrease in
17 the CIAC associated with hook-up fees collected for future
18 plant costs.

19 Number three, the Central Arizona Groundwater
20 Replenishment District, or CAGRD, fees. This adjustment
21 is based on the disagreement between RUCO and the company
22 over treatment of this expense. RUCO recommends the CAGRD
23 fees be treated similar to other operating expenses while
24 the company proposed that these be treated as a
25 pass-through tax. RUCO also recommends the expense be

1 adjusted for the known and measurable 2009, 2010 CAGR fee
2 schedule, and therefore RUCO has made the appropriate
3 adjustment to reflect the increase from approximately 48
4 cents to 98 cents per thousand gallons, and this
5 adjustment will be included in the RUCO post-hearing final
6 schedules.

7 Number four is the amortization of rate case
8 expenses. This adjustment is based on RUCO's disagreement
9 with the company over the amortization period. The
10 company proposed three years while RUCO recommends
11 five years to more accurately reflect the company's
12 propensity to file timely rate applications.

13 And number five is the federal and state income
14 tax expense. This adjustment reflects RUCO disallowance
15 of income tax expenses because the company was organized
16 as a limited liability company or an LLC and thus does not
17 pay income tax. RUCO's witness William Rigsby will fully
18 be explaining RUCO's position of this adjustment during
19 the hearing.

20 MR. POZEFSKY: Your Honor, is RUCO 3 admitted
21 just subject to further review by the company?

22 ALJ WOLFE: I thought I would wait until after
23 the witness finishes testifying. It's been moved, and I
24 will rule on it after I find out what it is and the
25 objection.

1 MR. POZEFSKY: Okay. And I just didn't want to
2 forget it.

3 ALJ WOLFE: Thank you.

4 MR. POZEFSKY: Your Honor, at this time I would
5 make Mr. Moore available for cross-examination.

6 ALJ WOLFE: Mr. Mannato, do you have questions
7 for Mr. Rigsby -- I mean, for Mr. Moore?

8 MR. MANNATO: Just a couple.

9 ALJ WOLFE: Okay. If you could get the mike
10 there.

11

12 CROSS-EXAMINATION

13

14 BY MR. MANNATO:

15 Q Good morning, Mr. Moore.

16 A Good morning.

17 Q Mr. Moore, in your analysis of Johnson Utilities,
18 did you have an opportunity to consider the potential
19 impact that a reductions in the utility's CAGR fees,
20 which they pay, would affect the customers' rates?

21 A The average customer uses, I believe,
22 6,931 gallons and the CAGR, the composite rate blended
23 for the company's -- for the Phoenix and the Pinal AMA
24 is -- I determined to be about 97.2 cents. So therefore
25 the average monthly cost per customer for that CAGR would

1 be about \$6.74.

2 Q And can you state why it is the company has to
3 pay fees to CAGRD?

4 A The company explained -- Mr. Tompsett's
5 explanation in his testimony is quite clear on the reason
6 why. It's basically because they have engaged in
7 acquiring a 100-year assured source of water supply.

8 Q Is your understanding of the fee paid to CAGRD
9 that it results from withdrawing an amount of groundwater
10 that is in excess of what Utility is permitted to withdraw
11 by the Central Arizona Water Conservation District?

12 A I'm not completely clear on exactly what is
13 entailed in that fee. I'm sorry.

14 Q Okay. But you do generally understand that the
15 fee results from pumping of groundwater in the Pinal AMA?

16 A Again, the exact reason for the fee -- I remember
17 reading Mr. Tompsett's testimony, and I was assured of the
18 reasonableness and the need of the fee, yes.

19 Q All right. You are assured of the reasonableness
20 of the fee, but do you have an idea of how those fees
21 could be reduced by the Utility? What they could do --
22 let me withdraw that and restate it.

23 Do you have an idea, in your opinion, as to how
24 the Utility could take steps to reduce the amount of fees
25 paid to the CAGRD?

1 A. The fees are based on the amount of gallons sold
2 that the company sells. In the test year it was
3 2.6 million gallons times the assessed rate is what the
4 fee paid to CAGRD is. So it's based on the number of
5 gallons that the company sells.

6 Q. Well, okay. Let me try to ask you this: You
7 understand that the fee results from the withdrawal of
8 groundwater; correct?

9 A. Again, I do not know the actual ins and outs of
10 what amounts to the fee. I'm sorry.

11 Q. Okay. Fair enough.

12 All right. Let me ask you a question about the
13 contributions in aid of construction.

14 In studying the company's receipt of
15 contributions in aid of construction, did you have an
16 opportunity to analyze the company's requirements for the
17 repayment of the contributions in aid of construction?

18 A. No. RUCO's adjustment here is fairly simple.
19 CIAC, as recorded on their books, is a reduction to rate
20 base. And regardless of the components of that CIAC, it
21 remains a reduction from rate base. So the source and the
22 reasoning for the hook-up fees, I did not do an in-depth
23 analysis.

24 Q. All right. Well, how -- in your opinion then,
25 other than the fact of characterizing it as a factor to be

1 used as a reduction in rate base, how do you -- what
2 impact does the obligation to repay the contributions in
3 aid of construction have on the rates charged to the
4 customers?

5 A. The obligation to repay?

6 Q. Yes.

7 A. Whose obligation to repay CIAC?

8 Q. Okay. Fair enough.

9 How would you -- in your opinion, what does
10 Johnson Utilities' obligation to repay to the developers
11 the contributions in aid of construction have to do on the
12 rates that it charges? In other words, would you -- let
13 me start over again.

14 Would you agree that Johnson Utilities is
15 required at some point to repay a developer the
16 contributions in aid of construction?

17 A. No. They have received the contributions in lieu
18 of providing service to future customers. So when the
19 need arrives to service additional customers, Johnson
20 Utilities is required to provide that infrastructure.

21 Q. Well, if a developer constructs on-site
22 infrastructure in a subdivision which is then dedicated to
23 Johnson Utilities, what is your understanding as to how
24 the developer is compensated for that expenditure by
25 Johnson Utilities?

1 A. He doesn't -- he turns over the ownership of that
2 plant to Johnson Utilities, and then the developer would
3 recoup his costs through the cost of the lots as he sells
4 them.

5 Q. Mr. Moore, as part of developing your opinion for
6 today, did you have an opportunity to review any of what I
7 will refer to as master utility agreements between Johnson
8 Utilities and various developers?

9 A. No, I did not.

10 Q. You did not. Okay.

11 So your opinion does not include the concept, if
12 you will, that Johnson Utilities has an obligation to
13 repay anything, whether it be in cash or otherwise, to the
14 various developers that it has agreed to provide service
15 to?

16 A. It is my opinion that they have the
17 responsibility to provide service to these customers in
18 these developments who have paid hook-up fees -- or the
19 developer who has paid hook-up fees.

20 Q. All right. Okay. Maybe that is the source of
21 our disagreement, if you will.

22 You know that Johnson Utilities receives hook-up
23 fees from developers; correct?

24 A. Yes.

25 Q. And what is the amount of that per unit?

1 A. I do not know.

2 Q. Does the number \$1,900 sound familiar?

3 A. Subject to check. I am unfamiliar with it.

4 Q. So there is that component, hook-up fees.

5 They also receive a value in the form of
6 infrastructure put in the ground by developers; correct?

7 A. Yes.

8 Q. And then they use that infrastructure to supply
9 services to the people that inhabit the subdivision;
10 correct?

11 A. Correct.

12 Q. And isn't it true that Johnson Utilities is
13 required to pay a certain amount of money back to the
14 developer out of the revenue that it receives from the
15 utilization of infrastructure put in the ground by the
16 developer?

17 A. Oh, you are talking about advances in aid of
18 construction, where the agreement would cover, say,
19 10 percent of the revenue generated by that system over
20 10 years?

21 Q. Yes.

22 A. Yes.

23 Q. You have considered that?

24 A. I know of IACC, and IACC is based on the revenue
25 that is generated from the infrastructure that was paid

1 for.

2 Q Okay. All right. So now we talking about the
3 same animal. So let me revert back to the earlier
4 question then.

5 Did you consider how the obligation to repay the
6 IACC affects the rates that are charged by the utilities
7 to its customers?

8 A No. The IACC -- the revenue generated or the
9 repayment had no bearing on me removing the IACC or
10 reinstating the IACC and CIAC into rate base.

11 MR. MANNATO: Okay. I have no further questions.

12 ALJ WOLFE: Thank you.

13 Mr. Marks, do you have questions for Mr. Moore?

14 MR. MARKS: Thank you, Your Honor. I do not.

15 ALJ WOLFE: Ms. Scott or Ms. Vohra?

16 MS. SCOTT: I just had one quick question back to
17 the CAGRD.

18 I just want to confirm, is it correct that the
19 CAGRD fees are assessed based on gallons sold by the
20 company, not by the gallons pumped?

21 THE WITNESS: I believe it's gallons sold is on
22 the formula that I duplicated.

23 MS. SCOTT: Okay. Thank you. That is all.

24 ALJ WOLFE: Mr. Metli?

25 MR. METLI: Thank you, Your Honor.

1

CROSS-EXAMINATION

2

3 BY MR. METLI:

4 Q Good morning, Mr. Moore.

5 A Good morning.

6 Q I'm going to talk first about the reductions in

7 plant not used and useful in the water division. Okay?

8 You would agree with me that both RUCO and Staff
9 are recommending a disallowance for water plant deemed not
10 used and useful in the amount of \$4,127,019; is that
11 correct?

12 A Subject to check.

13 Q Subject to check. And these will be subject to
14 check, of course.

15 A Okay.

16 Q And would you agree that Johnson agrees with all
17 but approximately \$731,000 of that for a four-mile 12-inch
18 water main to serve Silverado Ranch?

19 A Correct.

20 Q So that's the dispute?

21 A Right.

22 Q Did you analyze or consider whether Johnson
23 Utilities' decision to construct that 12 miles of 12-inch
24 water main was prudent?

25 A The prudence issue would be, more or less, a

1 given. The company is supposed to act in a prudent
2 manner. The element -- the rate case element that was --
3 the significant analysis was based on used and useful, and
4 based on Staff's engineering's report, that line does not
5 meet the criteria of used and useful.

6 Q Thank you, Mr. Moore, but I'm asking you about
7 whether it was prudent.

8 Did RUCO make a determination of whether Johnson
9 Utilities was prudent in constructing that line?

10 A I did not make a definitive analysis of the
11 prudence of that line.

12 Q Okay. Do you know whether Staff made an analysis
13 on whether that line was prudently constructed?

14 A I wouldn't know if they did or didn't.

15 Q So, to your knowledge, no one in this case that
16 you know of has made a prudence determination on that
17 line?

18 A Staff could have determined a prudence, done an
19 prudence analysis.

20 Q And if Staff would have done a prudence analysis,
21 that would be contained in the testimony of Marlin Scott,
22 their engineer?

23 A That is the testimony I relied on to make my
24 decision on the used and useful.

25 Q Okay. So if Staff did provide a prudence

1 analysis, is that where I would find it?

2 A. It could be, yes.

3 Q. Okay.

4 A. It could be there.

5 Q. Fair enough.

6 You reviewed the rebuttal testimony of

7 Mr. Tompsett in this case, did you not?

8 A. Yes.

9 Q. His rejoinder testimony?

10 I'm going give you some statements -- and we can
11 certainly go to his testimony to check if I'm accurate --
12 but I want to know whether you agree or disagree with his
13 testimony or not. Okay?

14 Did you read where Mr. Tompsett testified that
15 the four miles of 12-inch water main was constructed to
16 serve a planned 1834-home subdivision called Silverado
17 Ranch?

18 A. I read that, yes.

19 Q. Do you dispute that?

20 A. No.

21 Q. Okay. Did you read the testimony of Mr. Tompsett
22 where he testified that Johnson Utilities received a
23 request to provide water service to Silverado Ranch?

24 A. Yes.

25 Q. Okay. You don't dispute that?

1 A. No.

2 Q. What about the testimony where Mr. Tompsett said
3 that Silverado Ranch -- you would agree it's within the
4 CC&N of Johnson Utilities; correct?

5 A. Yes.

6 Q. And Mr. Tompsett testified that Johnson Utilities
7 signed a master utility agreement with the developer at
8 Silverado Ranch; correct?

9 A. Correct.

10 Q. Did you happen to review a copy of that master
11 utility agreement, which was attached as Exhibit A to
12 Mr. Tompsett's testimony, rebuttal testimony?

13 A. I perused it.

14 Q. Okay. Mr. Tompsett also testified that the
15 four-mile 12-inch water main was completed in 2006.

16 Do you disagree with that?

17 A. No.

18 Q. He also testified that the original cost was
19 \$731,125.

20 Do you disagree with that?

21 A. No.

22 Q. Did you read Mr. Tompsett's testimony where he
23 testified that the four miles of 12-inch water main is in
24 place and ready to provide service?

25 A. I recall that, yes.

1 Q Do you dispute that?

2 A Nope.

3 Q Okay. If the company prudently constructs plant
4 and then for whatever reason this Commission disallows it
5 based upon a used and useful determination, would you
6 agree that this type of action would discourage companies
7 from investing in plant first before getting a
8 determination of used and useful independent of prudence?

9 A No. I believe it's a company's risk to undertake
10 to make those types of decisions with knowing that the
11 underlying criteria to receive rate base treatment -- to
12 make sure it was used and useful.

13 Q And that would be true even if the construction
14 of that plant was prudent?

15 A Yes. There is two different criteria between
16 being prudent and being used and useful, yes.

17 Q And it's RUCO's position that those are two
18 different analyses?

19 A Correct.

20 Q Okay. The company has asserted in this case that
21 out of the \$4,127,019 in plant that was deemed not useful,
22 \$1,217,638 was funded with CIAC.

23 Do you recall that?

24 A Yes.

25 Q Do you dispute that is, in fact, the case?

1 A. The company mentioned that in their rejoinder,
2 but I think there is a problem of whether verifying the
3 actual CIAC.

4 Q. I'm sorry. Could you repeat what you just said?
5 I didn't hear you.

6 A. The Staff analysis mentions that they were taking
7 the company at its word that the CIAC was -- you know,
8 that CIAC was actually used to finance that project, yes.

9 Q. Does RUCO dispute that?

10 A. On the surface, no.

11 Q. And RUCO, they didn't do an independent analysis
12 to determine whether or not, in fact, that CIAC was the
13 correct amount?

14 A. Correct, we didn't analyze it.

15 Q. Didn't Mr. Bourassa provide testimony in this
16 case and evidence regarding the CIAC and IACC accounts?

17 A. Yes. There was like 758 pages in rejoinder
18 there, I think, of information from CIAC or main extension
19 agreement information, yes.

20 Q. And the company also asserted that out of that
21 \$4 million plus in plant deemed not used and useful,
22 \$1,321,472 was funded with IACC.

23 Do you recall that?

24 A. Yes.

25 Q. And you don't dispute those numbers?

1 A. No.

2 Q. That being the case, shouldn't a correspondent
3 reduction to the CIAC and IACC accounts in rate base be
4 made in order to properly match adjustments for
5 plant-in-service?

6 A. From RUCO's point of view, the IACC and CIAC
7 account does not designate which particular plant, capital
8 costs are associated with it. The analysis is how much
9 CIAC is recorded on the books, and that becomes the
10 reductions to rate base on the analysis on the schedule.

11 Q. Didn't Mr. Bourassa provide specific evidence as
12 to what constituted the CIAC and the IACC amounts?

13 A. Are you referring to this plant that is in
14 dispute here?

15 Q. In his rejoinder testimony.

16 A. His testimony attempted to qualify the IACC and
17 CIAC expenditures, yes.

18 Q. But it's RUCO's position in this case that there
19 would be no mismatch if IACC and CIAC is not taken out of
20 the rate base accounts?

21 A. There may be a mismatch, but the problem is of
22 the company's doing. The company could have requested a
23 referred accounting order to quantify these hook-up fees
24 and ask for treatment where they could be deferred until
25 the cost of the -- or the plant was constructed.

1 Q. You would agree with me that Staff agrees that
2 for the plant deemed not used and useful a corresponding
3 reduction to CIAC and IACC balances should be made; is
4 that correct?

5 A. They made that adjustment, yes.

6 Q. Doesn't the company submit annual hook-up fee
7 reports to the ACC?

8 A. Yes.

9 Q. Wouldn't this type of information be provided in
10 those reports?

11 A. To receive ratemaking recognition, I believe they
12 would have to have the Commission approve an accounting
13 order, in which would defer those CIACs until such time
14 that the plant was constructed.

15 Q. Wouldn't that be true for unexpended CIAC and not
16 what I just referenced here?

17 A. Could you repeat that?

18 Q. When you say an accounting order, wouldn't that
19 be applicable to unexpended CIAC?

20 A. The accounting order would cover the hook-up fees
21 for services that there is no infrastructure provided for
22 and that the company is going to expend that money in
23 later years.

24 Q. But isn't the reduction we are talking about
25 here, CIAC and IACC, for plant that has been constructed?

1 A. Again, the CIAC account does not specify what
2 capital projects were paid for by non-investor capital.

3 Q. So just -- we will close the loop here.

4 A. Okay.

5 Q. RUCO disagrees that corresponding adjustment to
6 IACC and CIAC balances are appropriate; right? They
7 disagree?

8 A. I disagree.

9 Q. Thank you.

10 Let's move to the wastewater division, and we
11 will go a little quicker now that I understand your
12 position with CIAC and IACC. So we won't painstakingly go
13 through it again.

14 The plant not used and useful in the wastewater,
15 both RUCO and Staff are recommending a disallowance of
16 \$4,595,298; is that correct?

17 A. Subject to check, yes.

18 Q. And that is for two plant -- two pieces of plant;
19 right? That is the four miles of eight-inch forced main
20 at Silverado Ranch and the Precision Wastewater Treatment
21 Plant; correct?

22 A. Correct. Yes.

23 Q. And to make the record complete, the Precision
24 Wastewater Treatment Plant was \$1,696,086 and the four
25 miles of eight-inch main at Silverado Ranch was \$690,186,

1 subject to check?

2 A. Yes.

3 Q. And with respect to the water plant, can I assume
4 that RUCO didn't do an independent prudency evaluation
5 with respect to these two plant items?

6 A. Correct.

7 Q. And Johnson Utilities is agreeing to a
8 disallowance of \$2,209,026; is that correct?

9 A. Correct.

10 Q. And you don't know whether Staff has done an
11 independent prudency review; correct?

12 A. Correct.

13 Q. To your knowledge, was the sewer force main, that
14 eight-inch sewer force main, was that in place at the end
15 of the test year of 2007? Was it constructed and in
16 place; do you know?

17 A. I assume it was. I'm not sure.

18 Q. I'm going refer you back to Mr. Tompsett's
19 testimony again, and I will ask you whether you agree or
20 disagree with some of the statements he has made.

21 Do you dispute that that eight-inch sewer main
22 was constructed to serve Silverado Ranch development?

23 A. Yes.

24 Q. You dispute that?

25 A. No.

1 Q Okay. Do you dispute that Johnson Utilities
2 received a request for service to provide sewer service to
3 Silverado Ranch?

4 A No.

5 Q Do you dispute the fact that Johnson Utilities
6 signed and entered into a master utility agreement with
7 the developer at Silverado Ranch addressing sewer
8 services?

9 A No.

10 Q And I suspect you perused that master agreement?

11 A I looked it over, yes.

12 Q Do you dispute the fact that that eight-inch
13 sewer force main is in place and ready to provide service?

14 A No.

15 Q Okay. Now, going down to the Precision
16 Wastewater Treatment Plant, again, no independent prudency
17 analysis was done by Staff?

18 A I don't know.

19 Q Okay. I switched up on you. You were expecting
20 me to ask RUCO first. I need to throw you off, Rodney. I
21 don't want to get you into a rhythm.

22 A Just checking.

23 Q RUCO didn't do an independent prudency analysis;
24 correct?

25 A Correct.

1 Q Okay. Do you know whether the wastewater
2 treatment plant was in service at end of the 2007 test
3 year?

4 A I'm not sure.

5 Q You are not sure?

6 A No.

7 Q In Mr. Tompsett's testimony he testified that in
8 2002 ADEQ implemented new policies requiring that
9 wastewater treatment capacity be fully constructed and
10 operational prior to subdivision approvals.

11 Do you dispute that?

12 A No.

13 Q Mr. Tompsett also testified that ADEQ ceased
14 issuing approvals to construct sanitary facilities for
15 subdivisions to developers within Johnson Ranch unless and
16 until Johnson constructed the Precision Wastewater
17 Treatment Plant.

18 Do you dispute that?

19 A No.

20 Q And you would agree with me that Johnson
21 Utilities holds a CC&N to provide sewer service to Johnson
22 Ranch?

23 A Yes.

24 Q And you don't dispute that Johnson Utilities
25 received a bona fide request to provide sewer service to

1 the new development known as Johnson Ranch; correct?

2 A. Yes.

3 Q. Now, when such a request is made, would you agree
4 with me that the utility is obligated to provide service;
5 correct?

6 A. Yes.

7 Q. Now, if ADEQ refused to issue new approvals to
8 construct unless the Precision Wastewater Treatment Plant
9 was constructed, how would Johnson Utilities fulfill its
10 obligation to serve under its CC&N unless it constructed
11 the plant?

12 A. Well, the company has an obligation to serve; and
13 therefore it designs its capital projects accordingly.
14 However, for ratemaking purposes, definitely it would have
15 to meet the criteria of used and useful to be included in
16 rate base.

17 Q. So if ADEQ has certain requirements, like in this
18 case that that wastewater treatment plant needed to be
19 built, you are saying that the Commission will do an
20 independent analysis and remove some of that plant even
21 though they were required to under state law?

22 A. If the analysis proved that it was neither excess
23 capacity or not used and useful, it would be removed out
24 of the rate base.

25 Q. Would it be prudent to -- would it have been

1 prudent to construct a smaller plant?

2 A. The company is expected to make prudent
3 investments, and it would be a given that they would
4 construct the plant in the most prudent way.

5 Q. Should the company have waited for the
6 development to be constructed first before constructing
7 the wastewater treatment plant?

8 A. No. It wouldn't be able to fulfill its
9 obligation to serve it.

10 Q. And, in fact, under ADEQ's requirements they
11 wouldn't be allowed to do that. They would have to
12 construct the plant first; correct?

13 A. Correct.

14 Q. And you don't dispute the fact that the Precision
15 Wastewater Treatment Plant has been constructed?

16 A. No.

17 Q. Okay. Now, with respect to the CIAC and IACC, we
18 won't go through the number, but would you agree with me
19 that Staff has agreed to make corresponding reductions to
20 IACC and CIAC in this case for their rate base accounts;
21 correct?

22 A. Correct.

23 Q. I will move now to excess capacity. We will
24 start with the water division.

25 RUCO is recommending a disallowance for water

1 plant that it deems excess capacity in the amount of
2 \$1,127,065; is that correct?

3 A. Yes.

4 Q. Okay. And Johnson Utilities disagrees with that
5 amount?

6 A. Yes.

7 Q. Okay. And just so I'm clear, that was for water
8 plant constructed in the Anthem development, wells and
9 storage tank; do you recall?

10 A. Subject to check.

11 Q. Okay. And with the water and wastewater plant
12 associated with this disallowance of not used and useful,
13 RUCO didn't do an independent prudency review regarding
14 this excess capacity plant; correct?

15 A. Correct.

16 Q. And you don't know whether Staff has done one?

17 A. Correct.

18 Q. Mr. Tompsett testified that all three wells and
19 both storage tanks that were constructed in Anthem are
20 necessary to provide safe and reliable water service to
21 Anthem at Merrill Ranch.

22 Do you dispute that that was his statement?

23 A. No.

24 Q. Do you dispute that contention?

25 A. I did not do an independent engineering study of

1 that, so I wouldn't know whether that is a -- I relied on
2 Staff engineering.

3 Q Okay. And according to Mr. Tompsett, he
4 indicated that he believed that the Staff projections for
5 growth at the Anthem Merrill Ranch through 2012 were too
6 low.

7 Do you recall that?

8 A Yes.

9 Q But RUCO didn't conduct any independent analysis
10 to confirm whether Staff's growth projections were
11 accurate; correct?

12 A Correct.

13 Q And with respect to the IACC and CIAC amounts for
14 excess capacity, does RUCO dispute that \$1,127,065 for
15 that plant was funded with CIAC?

16 A No.

17 Q No dispute.

18 And would you agree with me that Staff had agreed
19 that for plant deemed excess capacity a corresponding
20 reduction to the CIAC balance was appropriate; correct?

21 A Correct.

22 Q With respect to the wastewater division,
23 Mr. Moore, RUCO also recommends a disallowance of
24 \$5,443,062, which constitutes the San Tan Phase II
25 Wastewater Treatment Plant; is that correct?

1 A. Correct.

2 Q. And just so the record is clear, RUCO didn't do
3 an independent prudence review as to whether the
4 construction of this plant was prudent; correct?

5 A. Correct.

6 Q. In Mr. Tompsett's rebuttal testimony he testifies
7 that the San Tan Phase II Wastewater Treatment Plant is
8 actually needed now and will be put to use in late 2009 to
9 treat wastewater flow that will be redirected from Johnson
10 Utilities Pecan Wastewater Treatment Plant.

11 Do you dispute that?

12 A. That is what his testimony states, yes.

13 Q. Okay. Does RUCO have any reason to dispute that
14 assertion?

15 A. I did not make an independent study, so, no.

16 Q. Okay. Did you read Mr. Tompsett's testimony when
17 he indicated that the purpose of redirecting the sewer
18 flow from one wastewater treatment plant to another was to
19 take advantage of operational flexibility and cost
20 savings?

21 A. I read that, yes.

22 Q. Do you dispute that?

23 A. No.

24 Q. Okay. So RUCO doesn't dispute Johnson Utilities'
25 contention that by redirecting the sewer flow, it will

1 hold off the need to construct new capacity at the Pecan
2 Water Treatment Plant; is that correct?

3 A. That is what he inferred in his testimony, yes.

4 Q. Do you have any reason to dispute that?

5 A. No.

6 Q. And with respect to the IACC and the CIAC, it's
7 the company's position that \$3,697,251 of that plant was
8 funded with CIAC.

9 Does RUCO dispute that amount?

10 A. No.

11 Q. And would you agree with me that Staff agrees
12 that for the plant deemed excess capacity a corresponding
13 reduction to the CIAC balances was appropriate and they
14 made that reduction to rate base?

15 A. Yes.

16 Q. Okay. And RUCO's removal of that Phase II San
17 Tan Wastewater Treatment Plant for excess capacity was
18 based solely on Staff's findings; correct?

19 A. Yes. We relied on Staff engineering, yes.

20 Q. Mr. Moore, with respect to post-test year plant,
21 you would agree with me that RUCO supports the company's
22 adjustment to remove \$2,201,866 from post-test year plant
23 for plant it determined was constructed in 2007. Do you
24 recall that?

25 A. Correct. Yes.

1 Q And you would agree with me, sir, that RUCO has
2 not made a corresponding adjustment to remove post-test
3 year plant from rate base in this case for the water
4 division; is that correct -- excuse me -- wastewater?

5 A I did not remove any post-test year plant.

6 Q Okay.

7 A Correct.

8 Q Now, I will move to -- are we okay -- unsupported
9 plant costs.

10 RUCO has not made any corresponding adjustment to
11 remove unsupported plan costs in this rate case; is that
12 correct?

13 A Correct.

14 Q And that is true for both the water and
15 wastewater divisions; correct?

16 A Correct.

17 Q Mr. Moore, with respect to affiliate profit, RUCO
18 has not made a corresponding adjustment to remove
19 affiliate profit from rate base in this case; is that
20 correct?

21 A Correct.

22 Q And that is true for both the water division and
23 the wastewater division; correct?

24 A Correct.

25 Q And next I want to move to the unexpended CIAC

1 issue. Okay?

2 A. Okay.

3 Q. RUCO is recommending including \$6,931,078 of
4 unexpended hook-up fees in rate base for the water
5 division; is that correct?

6 A. Yes.

7 Q. And along with that \$16,505 for the wastewater
8 division; correct?

9 A. Yes.

10 Q. You would agree with me that the customer who is
11 credited with paying that hook-up fee is not present on
12 the system currently; is that correct?

13 A. Correct.

14 Q. You would also agree with me that the plant costs
15 for capacity intended to be funded with these hook-up fees
16 are not in the plant-in-service balances; correct?

17 A. Correct.

18 Q. Because nothing has been built yet?

19 A. Correct.

20 Q. Okay. Would you also agree with me, sir, in
21 collecting these hook-up fees Johnson Utilities has
22 entered into agreements with developers and is committed
23 to constructing the backbone facilities necessary to serve
24 these future customers in those developments?

25 A. Yes.

1 Q Would you also agree with me, sir, that these
2 funds are restricted and can only be spent on new capacity
3 for these developments?

4 A No. Between rate cases that money is held in
5 CIAC and the company has access to that, non-investor
6 capital, to do as it wishes.

7 Q So is it your testimony, sir, that the company
8 can take that \$6,931,078 and use it for operating
9 expenses?

10 A No. It's held within the -- for rate base or for
11 plant.

12 Q Can it be used as a distribution to its members?

13 A I don't know in -- inevitably if there is never
14 another house built, like what would happen to those
15 funds. If another customer was never -- if service was
16 never applied for, I don't know what would be the --

17 Q Well, isn't it true if a developer paid a hook-up
18 fee and never constructed the homes, Johnson Utilities
19 would be obligated to refund that hook-up fee?

20 A If the developer was bankrupt, I don't know what
21 the ultimate outcome of that would be.

22 Q Would you agree, sir, that if the plant costs are
23 not in rate base or recognized in rate base that there
24 would be a mismatch?

25 A Yes. There is a mismatch, but then again, it's

1 really of the company's doing.

2 This, these hook-up fees could have been -- like
3 I said, a deferred accounting order could have been asked
4 for; they could have been separated and removed from rate
5 base and deferred until the capital cost for providing
6 that service was spent. And the company has ignored that
7 avenue and now we are here arguing about what we are going
8 to do with CIAC.

9 Q. But isn't that exactly what the company is
10 proposing in this case, to defer these assets and use it
11 at a later date?

12 A. But in the ratemaking process the -- for
13 instance, on the company's B schedule it says report CIAC.
14 It doesn't say report CIAC minus a certain portion.

15 Q. One second. I'm thinking.

16 But would you agree with me that pro forma
17 adjustments are allowed by the rule?

18 A. Yes.

19 Q. And wouldn't this be an example of that?

20 A. We didn't consider it as a pro forma adjustment,
21 no.

22 Q. I want to talk to you about customer deposits. I
23 have one question.

24 You would agree with me that -- and the company
25 agreed that there would be a reclassification of

1 cost-to-service of meter advances and service line meter
2 deposits.

3 Are you familiar with that reclassification of
4 approximately \$6,779,771 in cost-to-service line and meter
5 advances; correct?

6 A. Correct.

7 Q. The dispute surrounds Staff and RUCO's addition
8 of \$378,138; is that correct?

9 A. I didn't know we had a dispute on that issue.

10 Q. Okay. So would it be fair to say then that I
11 should direct those questions to Staff?

12 Did you make an adjustment?

13 A. I was under the assumption that we made the
14 similar adjustment and left that much in customer
15 deposits.

16 Q. Did you follow Staff's adjustment to add \$378,138
17 to reflect the test year end customer security balance as
18 proposed by Staff?

19 A. I believe so, yes.

20 Q. Where did that \$378,138 come from; do you know?

21 A. I recollect that that is the amount of
22 customer -- actual customer deposits in the account.

23 Q. Okay. I'm going to actually direct you to our
24 application, and it's going to be Schedule E-1. I do have
25 copies I can pass out of that page if it's more

1 convenient. I know you do have the application up there,
2 but --

3 MR. METLI: Your Honor, may I approach?

4 ALJ WOLFE: Yes.

5 Q BY MR. METLI: Do you have that in front of you,
6 Mr. Moore?

7 A Yes, I do.

8 Q And I want to direct you to line -- and just for
9 the record, we are looking at Schedule E-1.

10 A Yes.

11 Q And that is part of the original application, and
12 it's marked in Exhibit A-1 for the record. I don't think
13 that has been admitted yet because Mr. Bourassa will be
14 sponsoring that.

15 You have that page in front of you; correct?

16 A Correct.

17 Q Going down to line No. 41 it says, "Customer
18 meter deposits less current"; correct?

19 A Correct.

20 Q And there is an amount, \$6,494,495; do you see
21 that?

22 A Yes.

23 Q And then if you go up to line 35 it says,
24 "Customer meter deposits current," and the amount is
25 \$285,275; is that correct?

1 A. Yes.

2 Q. Okay. Now, I did the math, so you don't have to,
3 and it will be subject to check. But when I add those two
4 numbers, I get the amount \$6,779,771, which is the amount
5 Mr. Bourassa used in his schedule; is that correct?

6 A. Yes.

7 Q. Okay. Now, would you -- on line 35 would you
8 move over one column to test year ending 2006? Do you see
9 the number there?

10 A. Yes.

11 Q. That looks like the \$378,138; is that correct?

12 A. Yes.

13 Q. So am I right to say that the test year ending
14 2006 number for customer meter deposits was added to those
15 numbers?

16 A. It seems that way.

17 Q. Okay. Is that appropriate?

18 A. I don't think so.

19 Q. Okay. I'm done with that.

20 You indicated that Mr. Rigsby would be talking
21 about income taxes?

22 A. Yes.

23 Q. So I direct questions to him?

24 A. Yes.

25 Q. Okay. I have just one more topic. Just one more

1 second.

2 I want to talk about the CAGRD pass-through. You
3 would agree that the company and Staff agree that the
4 CAGRD may be treated as pass-through expense; is that
5 correct?

6 A. Yes.

7 Q. And Staff has put on some conditions to that; is
8 that correct?

9 A. Correct.

10 Q. It's RUCO's position in this case that the CAGRD
11 should be expensed; is that correct?

12 A. Yes. RUCO does not agree with using adjustor
13 mechanisms for single line expense items.

14 Q. Okay. Now, you agree with me that Johnson
15 Utilities has been designated as having an assured water
16 supply; correct?

17 A. Yes.

18 Q. And they are a designated provider in both
19 Phoenix and the Pinal County AMAs; is that correct?

20 A. Yes.

21 Q. Now, according to the testimony of Mr. Tompsett,
22 he indicates that the costs of the CAGRD are covered by a
23 replenishment tax or replenishment assessment levied on
24 CAGRD members.

25 Do you recall that?

1 A. Correct. Yes.

2 Q. Would you agree with me that designated water
3 providers, such as Johnson Utilities, pay the
4 replenishment tax directly to the CAGRD, according to the
5 number of acre feet or of excess groundwater they deliver
6 within their service area during a year?

7 A. Again, I don't know the exact mechanism of how
8 the fee is determined. I was under the impression from
9 the formula that I found that it was based on the gallons
10 sold times the assessment fee for per thousand gallons.

11 Q. Well, if Mr. Tompsett testified that the tax was
12 paid according to the number of acre feet of excess
13 groundwater, would you have reason to dispute that?

14 A. No.

15 Q. According to Mr. Tompsett the CAGRD tax
16 assessment increases year by year, and he put a table on
17 his page 21.

18 Do you dispute that?

19 A. No. I went to the web site and got a copy of
20 that fee schedule.

21 Q. If that is the case, if the CAGRD is treated as
22 an expense item in this case, won't Johnson Utilities be
23 undercollecting that tax expense each year until it files
24 a new rate case?

25 A. No. If we get around to talking about the

1 amortization of rate case expense, the company has
2 indicated it would file every three years for a rate case,
3 using the 2008 test year, and three years would make the
4 next rate case using the 2011 test year. Okay?

5 Q. Okay.

6 A. I have provided a pro forma adjustment that would
7 cover the expenses through 2010. So basically the company
8 would remain whole until the assessment for the 2010/2011
9 year came into effect.

10 Q. And that assumption was based upon the fact that
11 Johnson Utilities would file a rate case within
12 three years; correct?

13 A. If they -- if they did, my pro forma adjustment
14 would cover the expenses until then.

15 Q. And we will get back to that in a second.

16 According to the chart in Mr. Tompsett's rebuttal
17 testimony on page 21, the overall increases in the Phoenix
18 and Pinal County CAGRD tax assessments will be 77 percent
19 and 76 percent respectively for a nine-year period from
20 2005 to 2014 based on historic firm and advisory rates
21 published by the CAGRD.

22 Do you dispute that?

23 A. No.

24 Q. And you would agree with me that those are
25 significant increases; correct?

1 A. Yes.

2 Q. Did you account for that type of increase in your
3 adjustment -- in your adjustment, that three-year pro
4 forma expense adjustment?

5 A. Yes. The test year was 48 cents for 1,000
6 gallons. My adjustments allows just about 98 cents per
7 1,000 gallons. So it covers those expenses through 2011.

8 Q. Okay. And according to the testimony of
9 Mr. Tompsett, within the Phoenix AMA there are only two
10 private water companies that are regulated by the
11 Commission that have been designated as having an assured
12 water supply, Johnson Utilities and Chaparral City Water
13 Company.

14 Do you disagree with that?

15 A. No.

16 Q. Is Chaparral City Water Company a developer, to
17 your knowledge?

18 A. No.

19 Q. Okay. Is it owned by a developer?

20 A. I don't know the full extent of --

21 What is their parent company?

22 Q. American States.

23 A. American States Water, yes.

24 Q. Do you know whether they are a developer?

25 A. I wouldn't know what their full scope is.

1 Q. Mr. Tompsett also testified that there are over
2 35 other water provides in the Phoenix AMA regulated by
3 the Commission which are not designated providers and do
4 not pay a CAGR tax.

5 Do you dispute that?

6 A. No.

7 Q. And Mr. Tompsett also testified that for these
8 providers the CAGR tax is directly assessed against each
9 individual homeowner through property tax bills; is that
10 correct?

11 A. I have no reason to dispute that.

12 Q. Okay. And just a couple questions because you
13 raised the issue on rate case expense.

14 It's RUCO's position in this case that the
15 amortization for rate case expense should be five years;
16 correct?

17 A. Yes.

18 Q. And what is the reason for that?

19 A. Basically the company -- this is the first rate
20 case since they received their CC&N in 1997, and it just
21 seems that the company has filed for several extensions,
22 for whatever reasons, and it seems their propensity is to
23 stay out longer than shorter.

24 Q. Well, you would agree with me that one of the
25 reasons for the extension was the proposed sale of the

1 system to the City of Florence; correct?

2 A. That one of them, yes.

3 Q. Would it have been prudent for the company to
4 file a rate case during the time that those negotiations
5 were going on?

6 A. No.

7 Q. Okay. And generally, when there is a new
8 start-up water company, isn't it the Commission's policy
9 that a rate case shouldn't be filed before a minimum of
10 five years?

11 A. I don't know if that is the policy or not. I
12 recollect somewhere it's a year after the first customer
13 is being served.

14 Q. Well, isn't it true that when there is a new
15 start-up water company, the first several years the
16 company operates at a loss?

17 A. Yes.

18 Q. And isn't it the Commission's policy that they
19 want to establish a certain threshold of time to determine
20 an accurate revenue and customer level?

21 A. We are 12 years past the CC&N being approved, so
22 there should be some historical record there.

23 Q. With respect to the CAGRD, you made an assumption
24 that the company would be filed for rate case within
25 three years.

1 Why haven't you used that same assumption with
2 rate case expense?

3 A. I used the known and measurable fee schedule so
4 that -- and that fee schedule went to 2010. That is the
5 reason for that assumption.

6 Q. Okay. One second.

7 MR. METLI: Your Honor, can I take a five-minute
8 break because I want to confirm with Mr. Bourassa
9 regarding the schedule that has been provided today? We
10 may be done.

11 ALJ WOLFE: Let's go ahead and take our morning
12 break and come back here at 11:00.

13 MR. METLI: Thank you, Your Honor.

14 (Whereupon, a recess was taken from 10:45 a.m.
15 until 11:03 a.m.)

16 ALJ WOLFE: Let's go back on the record.

17 Mr. Metli.

18 MR. METLI: Yes. Thank you, Your Honor. We have
19 no further questions for Mr. Moore, and we have no
20 objection to the admission of R-3.

21 ALJ WOLFE: Okay. There were no other objections
22 on R-3, so R-3 is admitted.

23 (R-3 was admitted.)

24 MR. POZEFSKY: Thank you.

25 ALJ WOLFE: Do you have redirect, Mr. Pozefsky?

1 MR. POZEFSKY: I do, Your Honor.

2

3 REDIRECT EXAMINATION

4

5 BY MR. POZEFSKY:

6 Q Let's start out with CAGRD, Mr. Moore.

7 Mr. Moore, RUCO considers the CAGRD cost as an
8 assessment rather than tax; correct?

9 A Correct.

10 Q And as an assessment RUCO does not believe it's
11 appropriate to treat it as a pass-through cost; correct?

12 A Correct.

13 Q And it is your understanding, is it not,
14 Mr. Moore, that Johnson Utilities' membership in the CAGRD
15 is voluntary?

16 A Yes.

17 Q Johnson Utilities can meet its requirements
18 through other resources; correct?

19 A Yes.

20 Q The AMA requirement, Mr. Moore, is for developers
21 who sell subdivided land; isn't that true?

22 A Correct.

23 Q So customers would not even have to pay this cost
24 to utilities if the utility were not a developer utility;
25 correct?

1 A. Yes.

2 Q. So clearly to the extent that there is a benefit
3 to the ratepayers, Mr. Moore, from these costs, that is
4 questionable; correct?

5 A. Yes.

6 Q. So despite the questionability of the benefit to
7 the ratepayers, Mr. Moore, RUCO still is recommending the
8 company expense to cost; correct?

9 A. Yes.

10 Q. Why expense it?

11 A. Well, a couple reasons as compared to the
12 adjustor mechanism. One in particular is, it would may be
13 an impetus for the company to file a timely rate case.

14 I lost my train of thought.

15 Q. You were explaining why RUCO is recommending it
16 be expensed.

17 A. It doesn't meet the criteria for like say a
18 single-line adjustment mechanism, volatility, and so it --
19 we wish to treat it just like other operating expenses:
20 postage and labor.

21 Q. Isn't it true that under RUCO's recommendation
22 ratepayers will experience rate stability?

23 A. Yes.

24 Q. And RUCO has also recommended the inclusion of
25 the cost for the 2008, 2009, and 2010; correct?

1 A. Correct.

2 Q. These costs are post-test year cost; correct?

3 A. Correct.

4 Q. And RUCO is making these recommendations because
5 it's known and measurable?

6 A. Yes.

7 Q. Okay. Is there any other reason why RUCO is
8 making these recommendations, Mr. Moore?

9 A. Well, we relied heavily on that decision, 64598,
10 where the Commission ruled on whether or not Johnson
11 Utilities could pass through the CAGR D fees as taxes. And
12 the order does mention that the Commission, having
13 reviewed the application and Staff memorandum, conclude
14 that the CAGR D tax is not the type of tax that can be
15 passed through within the Arizona Administrative Code and
16 therefore is not included in the company's current tariff.
17 So the decision, clearly stated, it shouldn't be
18 a pass-through.

19 Q. And you are reading that from the order? Just so
20 the record is clear, let me provide you with an
21 Exhibit R-4. Hold on.

22 A. Okay.

23 Q. Before you, Mr. Moore, should be what is marked
24 as RUCO's Exhibit No. R-4.

25 Is this the order that you were discussing?

1 A. Yes.

2 Q. And that was Decision 64598?

3 A. Yes.

4 Q. And that was docketed on March 4th of 2002?

5 A. Correct.

6 Q. And, Mr. Moore, just so the record is clear, the
7 purpose of this order was the company back in 2002 had
8 filed an application for clarification of the collection
9 of the CAGRD taxes; is that correct?

10 A. Correct.

11 Q. Okay. And what you had indicated before was what
12 the Commission had concluded; is that correct?

13 A. Correct.

14 Q. Okay. Thank you.

15 I would like to move to the topic of the
16 Silverado Ranch main that was discussed.

17 Let me ask you, Mr. Moore, in general RUCO does
18 not believe that prudence is the same as used and useful;
19 is that correct?

20 A. Correct.

21 Q. RUCO does not believe that prudently-constructed
22 plant is always used and useful; is that correct?

23 A. Correct.

24 Q. Isn't that the same conclusion that the
25 Commission reached in the recent Gold Canyon case?

1 A. Yes.

2 Q. The normal way a company recovers plant that is
3 built, Mr. Moore, is to actually build a plant and then
4 request recovery of the cost for the plant; is that
5 correct?

6 A. Correct.

7 Q. And after the company builds a plant and makes
8 its request to the Commission, the Commission then
9 determines prudence; is that correct?

10 A. Yes.

11 Q. And does the fact that the company normally is
12 required to build a plant before it's allowed to recover
13 its costs discourage the company or utilities from
14 building plant?

15 A. No. Regulated utilities would understand
16 regulatory lag and regulatory risk.

17 Q. Now, when RUCO recommends a plan that is not used
18 and useful be excluded from rate base, RUCO is not
19 suggesting that the plant cannot later be included in the
20 rate base when it becomes used and useful, is it?

21 A. Correct.

22 Q. And here with regard to the Silverado mains, RUCO
23 is not questioning the prudence of the company to build
24 those mains; is that correct?

25 A. Yes.

1 Q And at some point later if it's determined to be
2 used and useful, RUCO would not object at that point for
3 that plant to be recovered in rate base; is that correct?

4 A Correct.

5 Q Okay. I want to talk to you a little bit about
6 the unexpended CIAC and IACC.

7 Mr. Moore, CIAC is a contribution by the
8 developer; is that correct?

9 A Correct.

10 Q And that is opposed to an advance; is that
11 correct?

12 A Yes.

13 Q And advances are paid back to the developer; is
14 that correct?

15 A Yes, as revenue is generated to the system.

16 Q Okay. And it's paid back in the form of
17 10 percent of the revenue in water cases per year for up
18 to 10 years; is that correct?

19 A Generally, yes.

20 Q And after the 10 years, the IACC reverts to a
21 CIAC; is that correct?

22 A Correct.

23 Q And with regard to the wastewater or the sewer
24 it's -- the revenue is at 5 percent for 20 years; is that
25 correct?

1 A. Usually, yes.

2 Q. Okay. Contributions as far as homes that are not
3 built in the future, it's not the obligation of the
4 utility to pay back those contributions to the developer,
5 is it?

6 A. No.

7 Q. And is that because they're contributions as
8 opposed to advances?

9 A. Yes.

10 Q. With regard to rate case, Mr. Moore, a company
11 can file for a rate case after it's organized whenever it
12 wants; isn't that correct?

13 A. Yes.

14 Q. Just one more area on the CIAC -- just a couple
15 questions.

16 The unexpended hook-up fees that you talked about
17 that is CIAC, these moneys are still being held by the
18 company; is that correct?

19 A. Yes.

20 Q. Regardless of how they are treated, they are
21 still being booked as CIAC; is that correct?

22 A. Yes.

23 MR. POZEFSKY: That is it. Thank you, Your
24 Honor.

25 Your Honor, at this point I would move for the

1 admission of RUCO 4. Actually, if you want to take
2 administrative notice, that would be fine, as you did
3 earlier with Mr. Mark's exhibit.

4 ALJ WOLFE: And I will take administrative notice
5 of R-4.

6 MR. POZEFSKY: Thank you.

7 ALJ WOLFE: Mr. Metli, do you have any recross on
8 the redirect?

9 MR. METLI: I do, Your Honor.

10 ALJ WOLFE: I suppose I should give other people
11 a chance first.

12 Did you, Mr. Mannato?

13 MR. MANNATO: Just one question.

14

15 CROSS-EXAMINATION

16

17 BY MR. MANNATO:

18 Q Mr. Moore, just going back to Mr. Pozefsky's
19 question about the repayment of advances in aid of
20 construction, it is also true, though, that there is no
21 capital cost to the utility with regards to that repayment
22 obligation; correct? In other words, they do not have to
23 pay interest?

24 A Correct.

25 MR. MANNATO: Nothing further.

1 ALJ WOLFE: Mr. Marks, did you have any recross?

2 MR. MARKS: No, thank you, Your Honor.

3 ALJ WOLFE: Ms. Scott?

4 MS. SCOTT: No.

5 ALJ WOLFE: Now, Mr. Metli, thank you for
6 waiting.

7

8 RECROSS-EXAMINATION

9

10 BY MR. METLI:

11 Q Mr. Moore, I want to direct you to decision 64598
12 that your counsel handed out. Page 2, paragraph 7 it
13 says, "Staff determined that the CAGR tax cannot be
14 treated as pass-through tax within the Arizona
15 Administrative Code." It cites the code and it cites the
16 reason.

17 In this case has Staff changed its
18 recommendation?

19 A I can't remember for sure if they are asking for
20 their mechanism to be called a pass-through tax. I know
21 that they want to have an adjustment that would allow that
22 expense to be adjusted for increases in CAGR fees.

23 Q Well, you would agree with me that Staff is not
24 recommending that the CAGR be expense; correct?

25 A Correct.

1 Q So there is going to be some type of mechanism or
2 adjustor mechanism to allow for the pass-through; correct?

3 A Correct.

4 Q Now, the Commission has the authority at any time
5 to revise any decision it can; correct?

6 A Yes.

7 Q So the Commission -- just because the Commission
8 in this decision, 64598, determined that a pass-through
9 was not appropriate, the Commission is not bound by that
10 decision by law, are they?

11 A They can change that decision.

12 Q And with respect to some questions asked
13 regarding prudence, counsel referenced a Gold Canyon case;
14 do you recall that?

15 A Yes.

16 Q You would agree with me, sir, that the Gold
17 Canyon case and the result of that are currently under
18 appeal?

19 A Yes.

20 Q And wasn't one of the issues in the case excess
21 capacity and whether prudence was a determination of
22 excess capacity?

23 A Prudence was, yes, was discussed.

24 Q So that case is on appeal?

25 A Yes.

1 Q Okay. And, you know, your counsel asked a number
2 of questions early on with respect to CAGRD, and you
3 responded affirmatively.

4 Can you just explain to me how the CAGRD works?

5 A I believe that -- simplistically the company must
6 provide how many gallons were sold in the year, and the
7 assessment per thousand gallons is determined and that is
8 sent to the CAGRD.

9 Q And you admitted earlier, did you not, sir, that
10 for those companies that weren't designated, the CAGRD tax
11 was a pass-through and paid through their property tax;
12 correct?

13 A Yes.

14 Q So everybody does pay that tax one way or
15 another?

16 A Yes.

17 MR. METLI: Okay. Thank you. I have nothing
18 further.

19 ALJ WOLFE: Anything more, Mr. Pozefsky?

20 MR. POZEFSKY: I don't, Your Honor. Thank you.

21 ALJ WOLFE: Thank you very much for your
22 testimony, Mr. Moore. You are excused.

23 THE WITNESS: Thank you.

24 ALJ WOLFE: Mr. Crockett, was the plan to have
25 Mr. Tompsett resume his testimony at this time or were

1 there other changes?

2 MR. CROCKETT: Yes, Your Honor. We can do that
3 now or we can do it after lunch, whichever is your
4 preference.

5 ALJ WOLFE: Mr. Marks, you said you had quite a
6 bit more cross-examination for Mr. Tompsett, didn't you?

7 MR. MARKS: Yes, Your Honor, I would say probably
8 three or four more hours.

9 ALJ WOLFE: Goodness. Okay. I guess we better
10 go to lunch. So we will come back here at 12:20 -- 12:35.

11 (Whereupon, a recess was taken from 11:20 a.m.
12 12:39 p.m.)

13 ALJ WOLFE: Okay. Let's go back on the record.
14 Mr. Crockett, are you recalling Mr. Tompsett
15 right now?

16 MR. CROCKETT: We are recalling Mr. Tompsett for
17 cross-examination.

18 And I just wanted to mention before we got
19 started that yesterday I think we spent a fair amount of
20 time on issues that really were outside the scope of his
21 testimony on rebuttal or in rejoinder. And I hope that
22 today we can stick closer to issues that are at issue in
23 this case.

24 We feel like we've been headed down the path of
25 litigating in this case the complaint proceeding over the

1 billing and other issues that are pending in another
2 docket. So hopefully we can move faster and stick to
3 issues that are germane to the rate case.

4 ALJ WOLFE: Well, Mr. Crockett, I will give you
5 my view on this.

6 It is -- based on the evidence that I have seen
7 and heard so far, it's a customer service issue, and
8 customer service issues are rightfully a rate case issue.
9 So that is why I have been allowing this, and discovery
10 issues are also something that are germane and relevant.

11 So I understand what your objection is, and I do
12 hope also that we don't take an inordinate long amount of
13 time, but customer service issues are relevant to the rate
14 case.

15

16 BRIAN TOMPSETT,
17 called as a witness here in, appearing on behalf of the
18 Applicant, having been previously sworn, continued to be
19 examined and testified as follows:

20 ALJ WOLFE: Mr. Tompsett, good afternoon. You
21 are still under oath from yesterday.

22 THE WITNESS: Thank you, Your Honor.

23 ALJ WOLFE: Mr. Marks.

24 MS. SCOTT: I was going to wait for him to fill
25 the water up.

1 ALJ WOLFE: Go ahead and wait, if you want to,
2 whatever is your pleasure.

3

4 CROSS-EXAMINATION (CONTINUED)

5

6 BY MR. MARKS:

7 Q. Good afternoon, Mr. Tompsett.

8 A. Hello, Mr. Marks.

9 Q. I understand you have your glasses here today?

10 A. I actually do.

11 Q. Thank you. Mr. Tompsett, I understand that you
12 had some clarifications that you wanted to make with
13 exhibit -- proposed Exhibit SF-14; is that correct?

14 ALJ WOLFE: Off the record.

15 (Discussion off the record.)

16 ALJ WOLFE: Back on the record. The exhibit has
17 been located.

18 Q. BY MR. MARKS: Go ahead, if you would,
19 Mr. Tompsett.

20 A. Yes. We are on SF-14. Just that this was a
21 newspaper article we started discussing yesterday. I will
22 just kind of go through it line by line.

23 The picture that is at the top of the page that
24 is labeled, "Water sits in the bottom of the Queen Creek
25 wash," by the water reclamation plant, June 17th of 2008,

1 is misleading just because it had nothing to do with the
2 article or the effluent that we were talking about.

3 They did report that approximately 9,000 gallons
4 of effluent did leak into a retention basin. So that was
5 accurate.

6 But then from there on the facts that they are
7 reporting that Pecan water reclamation plant -- the
8 article claims that 10,000 gallon of sewage spilled due to
9 clogged pumps. We dispute that and filed the documents
10 with ADEQ that dispute that. We don't think that number
11 is right.

12 Then a few lines down it says, "Last year's
13 incident again involving 10,000 gallons of sewage" is
14 inaccurate. We disputed that and filed those documents
15 with ADEQ that disputed not only the volume but the fact
16 that it got to Queen Creek wash.

17 There are documents that have submitted with ADEQ
18 on the levels of E. Coli in the Queen Creek wash. We
19 dispute the fact that any of the E. Coli levels had
20 anything to do with Johnson Utilities. So that is
21 inaccurate.

22 We did disinfect the wash, and there are
23 additional documents involved with that and part of a
24 consent order. And it was a public service. We denied
25 that any of the E. Coli levels or fecal coliform levels

1 had anything to do with us, and we provided documentation
2 to ADEQ and this Commission that showed the E. Coli levels
3 and the fecal coliform levels in the subdivision were
4 higher than the levels that were actually in the standing
5 water in the Queen Creek wash and that we thought and
6 provided documentation that showed that the E. Coli and
7 fecals were coming out of the subdivision themselves, out
8 of the grass areas where the dogs go.

9 Also, the -- I think I messed up with -- hold on
10 a second.

11 Then the rest of it was pretty straightforward.
12 But we disputed and don't accept that the article is
13 accurate, and we stick by the documents that we submitted
14 to ADEQ as part of this filing.

15 Q. And with that, Mr. Tompsett, I understand that
16 your counsel has withdrawn his objection to having the
17 article admitted; is that correct?

18 A. That I don't know.

19 MR. CROCKETT: Your Honor, I don't recall
20 whether -- we don't object to the document being
21 considered as part of the record. I don't know if this is
22 one that Your Honor was going to take judicial notice or
23 if this is one that would be admitted as an exhibit.

24 But with Mr. Tompsett's explanation of the
25 deficiencies and inaccuracies in this newspaper article,

1 then we agree that it can be considered as part of the
2 record.

3 ALJ WOLFE: Mr. Marks, what is the purpose for
4 which you wish this SF-14 to be admitted?

5 MR. MARKS: Your Honor, I wish it to be admitted
6 for the purpose -- I discussed a number of notices of
7 violation and sewer system overflows with this company
8 occurring basically since the end of 2007, and the purpose
9 of putting this in was to show that there was an incident
10 that occurred as late as this week.

11 MR. CROCKETT: And, Your Honor, I would respond
12 by saying that this was not a sewer system overflow. This
13 was a release of treated effluent from a retention -- a
14 recharge basin, and it will not result in a notice of
15 violation.

16 ALJ WOLFE: I'm not going to admit it because I
17 don't believe that it's necessary to have this document in
18 the record in order to document that there was an incident
19 that occurred that is being purportedly reported by this
20 article. This exhibit couldn't be used to demonstrate the
21 truth of the assertions in it, and so I don't really see
22 what use it would be.

23 It was useful as a demonstrative exhibit for this
24 witness, but I'm not going to admit it.

25 MR. MARKS: I think the record is clear enough

1 without it. Thank you, Your Honor.

2 And before we go on, Mr. Crockett and I had a
3 discussion about what has been marked as SF-17, and that
4 is where we left off yesterday.

5 My understanding is that Mr. Crockett will not
6 object to the admission of SF-17.

7 MR. CROCKETT: That's correct, Your Honor.

8 ALJ WOLFE: Are there any other objections?

9 (No response.)

10 ALJ WOLFE: SF-17 is admitted.

11 (SF-17 was admitted.)

12 Q BY MR. MARKS: Mr. Tompsett, do you have a copy
13 of Exhibit SF-17?

14 A Yes.

15 Q I would like you to turn to the second page of
16 Exhibit SF-17. Let me know when you are there.

17 A Okay.

18 Q Did you prepare this or cause it to be prepared?

19 A I caused it to be prepared, yes.

20 Q And I wonder if you could briefly describe it.

21 A It says that the spreadsheet was prepared to
22 demonstrate the qualities of effluent that were delivered
23 and sold by Johnson Utilities for '06, '07 and '08.

24 Q And is that by month and by customer?

25 A Yes.

1 Q Okay. And Customer A is Swing First Golf; is
2 that correct?

3 A I believe that is accurate, yes.

4 Q Excuse me a moment.

5 Perhaps instead of me struggling to find a data
6 request on your part, you said you believe it's accurate
7 or you know that it's accurate, that that is Swing First
8 Golf, Customer A?

9 A I don't know that. It appears that Swing First
10 is Customer A, yes.

11 Q And Customer B is the San Tan Heights Homeowners
12 Association?

13 A That I don't know. That would be my assumption,
14 yes.

15 Q You would accept that subject to check?

16 A Yes.

17 Q How many customers are served effluent from the
18 San Tan Heights or San Tan Water Reclamation Plant?

19 A I'm sorry. Say it again.

20 Q How many customer are served with effluent from
21 the San Tan Water Reclamation Plant?

22 A Two.

23 Q And those are Swing First Golf and the San Tan
24 Heights Homeowners Association; is that correct?

25 A Yes.

1 Q. And then you have starting in -- let me ask it
2 another way.

3 In 2007 did you have any customers in -- in 2007
4 did you have any effluent customers other than San Tan
5 Heights Homeowners Association and Swing First Golf?

6 A. No, not that I'm aware of.

7 Q. Now, to your knowledge, what does Swing First
8 Golf use effluent for?

9 A. To irrigate the golf course.

10 Q. And is Swing First your biggest effluent
11 customer?

12 A. That I would have to check. I'm not sure. They
13 are, I think, the biggest from the San Tan plant.

14 Q. All right. That is fair enough.

15 Mr. Tompsett, I handed to you what has been
16 marked as Exhibit SF-18.

17 Do you have that?

18 A. Yes.

19 Q. Now, I would like you to take Exhibit SF-17, and
20 I will ask you some questions about the two exhibits. And
21 I would like you to compare the March 2006 numbers for
22 Swing First Golf that is in the first major column there
23 to the numbers in Row A for 2006 on Exhibit SF-17.

24 A. Okay.

25 Q. They are the same numbers, aren't they, other

1 than the units?

2 A. Yes.

3 Q. The units on what has been marked as Exhibit
4 SF-18 are one million gallons and the numbers on the
5 schedule that you prepared, which is SF-17, all the zeros
6 are actually shown; correct?

7 A. Yes.

8 Q. And then those are the same as the numbers for
9 Customer A; correct?

10 A. Yes.

11 Q. And then for 2007, do the numbers for
12 Customer A appear to be the same as the sales to Swing
13 First Golf that are listed on Exhibit -- proposed Exhibit
14 SF-18?

15 A. Yes.

16 Q. And how about for 2008, the same question: Are
17 your numbers for Customer A the same as what is shown for
18 the sales to Swing First Golf in 2008 on SF-18?

19 A. Yes.

20 Q. Now, I would like you to look at Customer B for
21 2007 on Exhibit SF-18 and compare that to the figures for
22 2007 in what has been marked as SF-18.

23 A. I'm sorry. Say that again, please.

24 Q. Compare Customer B in 2007 on the two exhibits,
25 please.

1 A. Okay.

2 Q. They are the same, aren't they?

3 A. Yes.

4 Q. How about for 2008? Are the numbers on the two
5 exhibits for sales to the San Tan HOA the same on both
6 exhibits?

7 A. Yes.

8 Q. Thank you, Mr. Tompsett.

9 I would like you to go back and take a look now
10 at SF-15. We will be comparing SF-15 to SF-18.

11 A. Okay. I have SF-15.

12 Q. All right. And would you compare the monthly
13 totals on SF-15 for the monthly total for sales --
14 production on SF-15 to the monthly production figure shown
15 on SF-18 for 2007?

16 A. Okay.

17 Q. They are the same, aren't they?

18 A. Appear so, yes.

19 Q. And I would like you to look at SF-16, and that
20 is the one with the daily flows for 2006 and 2007.

21 Do you have that?

22 A. Yes.

23 Q. Now, using Exhibit SF-16, one could obtain the
24 monthly effluent production for each month of 2006 by
25 adding up the daily production figures for each month;

1 correct?

2 A. So you are saying you can get to your --

3 Q. I'm not asking you to do the math.

4 A. Are you saying, could you arrive at the January
5 average daily flow calculation by --

6 Q. No. Let's start over here. Perhaps I wasn't
7 clear enough.

8 Could you arrive at monthly totals for -- let's
9 look at the first page of your attachment. Could you
10 arrive at the monthly total from April of 2006 or for
11 April of 2006 by adding up the 30 daily flows that are
12 reported for April?

13 A. So you are asking me if I add up all, or if
14 somebody added up all the daily flows from the first
15 quarter of April of '06, they could arrive at the total on
16 SF-18?

17 Q. Well, I was asking you in a more general sense,
18 but that -- if one wanted to determine the monthly amount
19 of effluent produced at the San Tan Water Treatment Plant
20 for April of 2006, one could get that from adding up the
21 30 daily flows on that schedule; correct?

22 A. Yes.

23 Q. That is all I wanted.

24 And then one could do the same for each of the
25 remaining months of 2006 and for 2008 and similarly get

1 the totals for those months; correct?

2 A. Yes.

3 Q. Now, back to Exhibit SF-18, this table was
4 included in Mr. Ashton's surrebuttal testimony; correct?

5 A. It says it is, yes.

6 Q. And have you seen it before? Did you see
7 Mr. Ashton's surrebuttal testimony?

8 A. Yes. I don't remember this specifically, but I
9 do.

10 Q. Did you review his surrebuttal testimony? It was
11 just four pages long.

12 A. Yes.

13 Q. Did you ask any data requests about this table or
14 anything else in the surrebuttal testimony?

15 A. No, not that I recall.

16 Q. You filed rejoinder testimony after Mr. Ashton
17 filed his surrebuttal testimony; correct?

18 A. Yes.

19 Q. And your rejoinder testimony did have a section
20 concerning Mr. Ashton surrebuttal testimony; correct?

21 A. Yes.

22 Q. All right. And you didn't put in any testimony
23 concerning this table in Exhibit SF-18, did you?

24 A. Give me a minute. Let me look.

25 Okay. What was the question?

1 Q. You didn't put any testimony in your -- you
2 didn't have any testimony in your rejoinder testimony
3 specifically concerning the accuracy of the table, did
4 you?

5 A. No.

6 MR. CROCKETT: Your Honor, I would just note for
7 the record that there is a reservation in the rejoinder
8 testimony that indicates that the company's lack of
9 response to any issue raised by the party should not be
10 construed as agreement on that issue. And that was
11 similar to the language that was included in, I think,
12 Mr. Marks' testimony for his client and other testimonies.

13 So if Mr. Marks is suggesting that somehow we
14 have waived the right to cross-examine on this testimony,
15 I would object to that.

16 MR. MARKS: I wasn't suggesting any such thing,
17 Your Honor. But I did want to move SF-18. I think we
18 have established it's bona fide.

19 ALJ WOLFE: Is there any objection to SF-18?

20 MR. CROCKETT: No, Your Honor.

21 ALJ WOLFE: SF-18 is admitted.

22 (SF-18 was admitted.)

23 Q. BY MR. MARKS: Mr. Tompsett, do you have before
24 you what has been marked as Exhibit SF-19?

25 A. Yes.

1 Q Could you identify that, please.

2 A Yeah. I'm reading it now.

3 It's identified as in the "re" line, "Responses
4 to Swing First Golf's, LLC, sixth set of data requests."

5 Q And turning to the attachment, it says it was
6 prepared by you; is that correct?

7 A Yes.

8 Q And my question isn't -- I'm sorry. I didn't
9 phrase that well. Not did I read it accurately -- I will
10 ask it differently.

11 Did you prepare this attachment?

12 A It was prepared at my direction, yes.

13 Q And then there is a further attachment -- well,
14 let me back up.

15 In 6.2A, the question is, "For each of the months
16 of January through March 2009 please provide the amount of
17 treated effluent produced from the San Tan Wastewater
18 Treatment Plant and the amount of effluent sales to Swing
19 First, to San Tan HOA, and any other customers."

20 Did I read that accurately?

21 A I'm sorry, I was reading a document.

22 Where were you reading?

23 Q 6.2A, the question. Would you like me to read it
24 again?

25 A No.

1 Q. It was accurate.

2 And your response was, "Please see the attached,"
3 and there was a page 3 to this.

4 Do you see that?

5 A. Yes.

6 Q. And page 3 provides for January 2009,
7 February 2009, and March of 2009 sales to Customer A,
8 which we previously identified as Swing First Golf, and
9 Customer B, which was previously identified as the San Tan
10 Heights Homeowner Association; correct?

11 A. Yes.

12 Q. And it also provides the amount of effluent
13 generated from the San Tan Wastewater Treatment Plant;
14 correct?

15 A. Yes.

16 Q. And could I use the information in this then to
17 update SF-18 to include the months of March, February --
18 January, February and March of '09?

19 A. I would assume so, yes.

20 Q. Thank you. Let's go back to SF-18. Let me know
21 when you are there.

22 A. Okay.

23 Q. You had unsold effluent at the San Tan Wastewater
24 Treatment Facility every month since it began delivering
25 effluent; correct?

1 A. According to this chart, yes.

2 Q. Now, to be fair, it shows in December of 2006 a
3 negative number, but I believe that there was a billing
4 issue in November of 2006 through December 2006 where you
5 were changing over your billing system and your account
6 codes. It looks like that accounts for that; is that
7 correct?

8 A. Yes. It looks like November and December have
9 been combined into one month.

10 Q. Now, what do you do with the effluent that you
11 don't sell?

12 A. It's either applied to recharge basins and goes
13 back into the ground or in this particular case some of
14 the effluent can be delivered down to the Section 11 plant
15 and treated or processed down there as well.

16 Q. If you give me a moment, I believe that was a
17 different answer that I was provided in a data request. I
18 need to look at that. Thank you.

19 Yes. It's what has been marked as Exhibit SF-19.
20 Take a moment to look at that. That is part B.

21 A. Okay.

22 Q. And you stated in there, in your response, that
23 there are no other effluent customers being served by the
24 San Tan Wastewater Treatment Plant and that effluent that
25 is not sold is recharged?

1 A. Yes.

2 Q. Is that still accurate?

3 A. Yes.

4 Q. So explain to me about the recharge that -- well,
5 let's start over again.

6 You either recharge it there at the facility or
7 you do what with it?

8 A. In the -- back in the first part of 2006 when the
9 San Tan Plant was in start-up mode, some of the effluent
10 was delivered into the wastewater system and treated from
11 the San Tan plant to the wastewater system that is treated
12 at Section 11 Wastewater Plant also.

13 So it would have been treated again and recharged
14 down there.

15 Q. Okay. Was that only in 2006?

16 A. To the best of my recollection, yes.

17 Q. So in 2007 and 2008 then we could state that
18 effluent that is not sold to either Swing First or the --
19 that was not sold to either Swing First or the homeowners
20 association was recharged at the plant then; correct?

21 A. Yes.

22 Q. Okay. Now, back to Exhibit SF-18 --

23 MR. MARKS: Oh, and Your Honor, I move SF-19.

24 ALJ WOLFE: Is there any objection?

25 MR. CROCKETT: No, Your Honor.

1 ALJ WOLFE: SF-19 is admitted.

2 (SF-19 was admitted.)

3 Q BY MR. MARKS: Do you get a benefit from
4 recharging effluent?

5 A I'm sorry. Could you clarify what type of
6 benefit?

7 Q Do you get any type of a benefit from recharging
8 effluent?

9 A You would get a credit for recharging effluent,
10 yes, as part of the permitting process.

11 Q And what does that credit entitle you to do?

12 A It's logged as a recharge credit with the
13 department of -- with ADEQ and the Department of Water
14 Resources.

15 Q And so you have logged a recharge credit.

16 What does that -- does that get you anything?

17 A Just goes against the water generated and
18 recharged in the annual reports.

19 Q Does it enable you to using more groundwater if
20 you are recharging water into the aquifer?

21 A At some point it would, yes.

22 Q At some point? When?

23 A You would have to amend the designation reports
24 and recharge reports, things like that with the Department
25 of Water Resources.

1 Q. But it's sort of like you are putting them in the
2 bank, you have credit for it, and you can take them out of
3 the bank at a later time?

4 A. In basic terms, yes.

5 Q. And that would avoid other -- having to pump
6 water from another source if you were able to take water
7 out that was previously recharged?

8 A. Not exactly. The piece that's -- we are kind of
9 looking at this in a vacuum. The piece that is missing
10 that is not on any of these exhibits is the excess CAP
11 water, Central Arizona Project Water. That was also
12 delivered to Swing First and the HOA, or the San Tan HOA
13 throughout years.

14 Q. I'm not asking about that at this time.

15 A. Well, my understanding is your question was to
16 kind of the water balance. And that is --

17 Q. All right then, go ahead then.

18 A. So that is part of the equation, was all I was
19 trying to get to.

20 So the -- for example, the 2006 excess CAP water
21 would have been ordered for the Swing First Golf course
22 in, I believe, September 15th of the prior year. So in
23 September '05 there would have been a CAP allocation or
24 water ordered for delivery in '06.

25 Q. Now, back to the water credits, I know in some

1 areas -- and forgive me I'm not familiar with Pinal
2 County -- but in some areas if you recharge a gallon in
3 one location, that entitles you then to pump a gallon out
4 of the ground from another location.

5 Do you have that ability?

6 A. If you are acting within the same AMA, yes, you
7 can do that.

8 Q. So, for example, if you put -- if you recharge
9 1,000 gallons at the San Tan facility, then you would be
10 entitled to take an additional 1,000 gallons out of from a
11 well located within the Pinal County AMA; is that correct?

12 A. I'm sorry. Say that again.

13 Q. Let me put it another way.

14 For every recharge gallon -- let me start over.

15 For every gallon of recharge credits that you
16 generate at the San Tan facility, that entitles you to
17 take an equivalent amount of groundwater at one of your
18 wells at another location; is that correct?

19 A. Yes. If you are operating within the same AMA
20 and aquifer, then it was permitted to do that, yes.

21 Q. Are you permitted to do that?

22 A. I believe so, yes.

23 Q. Okay. And you are -- your -- the Johnson
24 Utilities' service area is all within the same AMA?

25 A. No. It's within the Phoenix AMA and the Pinal

1 AMA.

2 Q This facility is within the Pinal -- AMA is
3 active management area; is that correct?

4 A It is.

5 Q And this facility is within the Pinal active
6 management area; correct?

7 A No. This facility is within the Phoenix AMA.

8 Q Even though it's in Pinal County?

9 A Yes.

10 Q Okay.

11 A Water doesn't know the county line.

12 Q And so to the extent that you generate recharge
13 credit from this facility, then you are allowed to
14 essentially cash that credit by taking water out of the
15 ground from any of your wells located within the Phoenix
16 AMA; is that correct?

17 A If they are designated as a recovery well, yes.

18 Q And you have wells that are designated as
19 recovery wells?

20 A We do, yes.

21 Q Within the Phoenix AMA?

22 A Yes.

23 Q Now, 2007 was the first full year that there was
24 effluent available from the wastewater treatment plant at
25 San Tan to deliver to Swing First; is that correct?

1 A. Yes.

2 Q. You started deliveries in March of 2006; is that
3 correct?

4 A. Yes. And actually March 2006 was the month that
5 San Tan -- it was in start-up mode.

6 Q. It was a partial month?

7 A. Yes, a partial month. It was also -- the product
8 that was delivered was the testing water from the plant as
9 well, which would have been groundwater.

10 Q. How much effluent did Johnson Utilities sell to
11 Swing First in 2007?

12 A. Which exhibit are we using?

13 Q. SF-18.

14 A. Okay. In -- according to this about 11 million
15 gallons.

16 Q. How much did it sell in 2008?

17 A. 127.

18 Q. And that is a difference of approximately 116
19 million gallons; is that correct?

20 A. In rough numbers, yes.

21 Q. What was your unsold amount of effluent in 2007?

22 A. According to this chart about 116.

23 Q. 116 million gallons?

24 A. Yes.

25 Q. In 2007 what did Johnson Utilities sell to Swing

1 First for most of its irrigation requirements?

2 A. Let me turn this off. Sorry, Your Honor.

3 Q. I'm sorry. I will stop texting you, or is that
4 your attorney texting?

5 A. I turned it off anyway.

6 Q. Let me read the question back.

7 A. What was the question?

8 Q. That's okay. In 2007 what did Johnson Utilities
9 sell to Swing First for most of its irrigation
10 requirements?

11 A. That was why I brought up the CAP water earlier.
12 For the year 2007, again CAP allocation would have been
13 ordered for CAP water deliveries for the golf course in
14 September of '06 for delivery in '07 and the utility pays
15 for that.

16 Q. And so the short answer is you predominately sold
17 CAP water for irrigation requirements in 2007?

18 A. Well, the CAP numbers aren't on here.

19 Q. I understand that.

20 A. So we are making an assumption. I will assume
21 that is subject to check or whatever you guys call that.

22 Q. That is fine, and we will go through some of the
23 bills with that.

24 What is CAP water? We have talked about it.

25 A. It's water that has come out of the lake.

1 Q And CAP stand for Central Arizona Project?

2 A Yes.

3 Q Its ultimate source is water taken out of the
4 Colorado River?

5 A Yes.

6 Q Now, can CAP be treated and sold for human
7 consumption?

8 A Yes, I believe it is.

9 Q And that would be known as potable water once
10 it's been treated?

11 A Yes, if it's treated properly and meets drinking
12 water standards, then it could be.

13 Q Does Johnson Utilities treat any CAP water for
14 sale to its customers?

15 A No.

16 Q Does Johnson Utilities have CAP allocation for
17 sale to its customer?

18 A No. We have excess.

19 Q Now, City of Phoenix, City of Tucson are two
20 municipalities that include CAP among their supplies?

21 MR. CROCKETT: Your Honor, I will object on the
22 grounds of relevance to the line of questioning.

23 ALJ WOLFE: It was the witness who raised the
24 issue of CAP water. I'll overrule it, but I would like to
25 know where it's going.

1 You may answer the question.

2 THE WITNESS: I'm sorry. What was the question
3 again?

4 Q. BY MR. MARKS: The City of Phoenix uses CAP water
5 as part of its portfolio for drinking water supplies; is
6 that correct?

7 A. I'm not certain of that. I don't know.

8 Q. You don't know of anybody in the state of Arizona
9 that uses CAP for drinking water purposes?

10 A. I am aware that it's allowed by rule. I couldn't
11 tell you a specific municipality or private utility that
12 does that or where it's allowed.

13 Q. Now, you testified before that the San Tan
14 facility generates A-plus reclaimed water; is that
15 correct?

16 A. Yes.

17 Q. And is that the highest rating that you can get
18 for reclaimed water?

19 A. Yes.

20 Q. So things haven't changed since I went to school;
21 A-plus is as good as you can get?

22 A. As far as I know, yes.

23 Q. But I believe you also testified that it still
24 can't be supplied and sold in Arizona as potable water; is
25 that correct?

1 A. I believe that's correct. Yes.

2 Q. What is the other primary source for drinking
3 water in Arizona -- strike that.

4 What is your other -- what is your primary source
5 for drinking water?

6 A. Groundwater.

7 Q. Groundwater. Are you exclusively a groundwater
8 system?

9 A. For drinking water, yes.

10 Q. Now, back to SF-18, in the months -- well, for
11 eight months you sold no effluent at all to Swing First;
12 is that correct?

13 A. I think what -- there was no bill generated for
14 that time period. I think effluent was delivered during
15 that time period, and it was -- the meter reads whether
16 it's manually read by an employee or not. The meter keeps
17 track. I think it was chewed up in December of '07.

18 Q. So to the extent -- and I believe there's a
19 discovery response to this effect.

20 You didn't read the effluent meters between May
21 and November of 2007; is that correct?

22 A. Is there a data request to that?

23 Q. There was something to that effect.

24 MR. CROCKETT: Perhaps we could refer to the data
25 request response.

1 Q BY MR. MARKS: I'll tell you what. Rather than
2 take up the time right now, if you let me on break, and I
3 will go back and find the data request. I will just ask
4 it another way.

5 It's your understanding that there was a period
6 of time in 2007 where the effluent irrigation meter was
7 not read; is that correct?

8 A I believe so, yes.

9 Q And then the totals would have been carried
10 forward to a later portion in time, and then when the
11 meter was read it would be have been captured for 2007;
12 correct?

13 A Yes.

14 Q Do you know what the times of year are when the
15 golf course has its highest irrigation needs?

16 A Overseeding -- when they do overseeding in the
17 summer, I would assume so.

18 Q And overseeding -- I believe you testified there
19 are two times, the summertime and overseeding time; is
20 that correct?

21 A Yeah, if a course overseeds. Not all courses
22 overseed.

23 Q And overseeding is typically done in early fall;
24 is that correct?

25 A Or late fall. I'm not sure exactly.

1 Q And by overseeding, you are talking about
2 replacing the summer grass with a winter rye grass; is
3 that correct?

4 A Yes.

5 Q And the water is used to germinate seed for the
6 winter rye predominately?

7 A Yes.

8 Q And summertime it's just the matter of the heat
9 requiring a lot of water for the irrigation for the golf
10 course; correct?

11 A I assume so. I'm not a grass expert or anything.

12 Q Mr. Tompsett, I provided you and your counsel a
13 copy of what has been marked as Exhibit SF-20.

14 Do you have that?

15 A Yes.

16 Q Take a moment to look at that, please.

17 MR. MARKS: I did move SF-19, Your Honor?

18 ALJ WOLFE: Yes, it was admitted.

19 MR. MARKS: Thank you.

20 THE WITNESS: Are we going back to these
21 exhibits?

22 Q BY MR. MARKS: SF-20.

23 A 18, 19 and 15?

24 Q The only one we are likely to go back to, and,
25 yeah, is 18.

1 A. I have a big pile here.

2 Q. If you get it out of order, you will deal with
3 the court reporter.

4 A. I don't want to deal with that.

5 Okay. Let me -- give me a minute here.

6 Q. Sure.

7 A. Okay.

8 Q. Now, this provided or caused to be provided
9 through counsel a large amount of e-mail and other
10 correspondence to Swing First; is that correct?

11 A. Yeah, as part of a data request, I think that is
12 correct.

13 MR. CROCKETT: Your Honor, I note for the record
14 that that was provided in the complaint case and not in
15 this docket.

16 MR. MARKS: And I didn't see any need, Your
17 Honor, to ask for it again when I already had it.

18 MR. CROCKETT: And again, Your Honor, we're
19 getting into these issues. The issues regarding the
20 billing dispute are somewhat complicated, and we have
21 not -- we have never planned to litigate those issues in
22 this case. And if we start opening the door and getting
23 into exhibits like this that go to the dispute between the
24 parties, we are litigating those issues in this case and
25 we will need to modify our case and spend a lot more time

1 addressing the specific billing issues month by month, day
2 by day with this client. That is the path we are heading
3 down, and that is my concern.

4 MR. MARKS: Your Honor, we are looking at here --
5 first of all, we have a customer that has -- well, let me
6 back up.

7 We have a utility that has a tariff under which
8 they are supposed to provide effluent. And this is a rate
9 case, and, as you said, it's a customer service issue.
10 It's more than a customer service issue in this case. The
11 Commission has, I think, a strong public policy that
12 favors providing effluent to golf courses and other
13 irrigation users. And that is what I'm talking about here
14 is to the extent that that Utility understood what its
15 obligation was to deliver effluent and, in fact, what it
16 did deliver to customers.

17 But this actually is the last thing I have on --
18 well, the last exhibit that I have -- I have a few more
19 questions about it -- concerning effluent deliveries.

20 ALJ WOLFE: Do you have more questions concerning
21 billings?

22 MR. MARKS: Well, I do, Your Honor, in the sense
23 that this utility has, not just with my client, but with
24 other clients, overbilled these customers substantially
25 for water and has then, in the case of my client, used it

1 as a pretext to discontinue service, which is certainly a
2 major customer service issue.

3 And so I will need to go through a few of those
4 bills to show where the customer was incorrectly billed
5 and then how that, in fact, led to the customer service
6 being cut off. But I don't intend to spend a long time on
7 that, Your Honor.

8 ALJ WOLFE: Mr. Crockett?

9 MR. CROCKETT: Your Honor, again, Mr. Marks and
10 his client are not requesting relief in this docket with
11 respect to the billing dispute. The company will
12 stipulate that there is a billing dispute between the two
13 parties.

14 As to Mr. Marks' comment that we have overcharged
15 other customers, that is again his argument in this case.
16 This is not in Mr. Tompsett's testimony.

17 So again, I think we need to stay focused on the
18 issues that are germane to the rate case. And Mr. Marks
19 has indicated in his filing and his client's testimony
20 that they are not seeking relief on the billing issues and
21 the other issues that they've raised in the compliant case
22 in this proceeding.

23 MR. MARKS: But, Your Honor, my client has raised
24 a number of issues, which in turn my policy witness is
25 relying on, those include customer service, misbilling

1 customers, improper terminations of customers, and similar
2 such issues that are talked about in Mr. Ashton's
3 testimony. And these are the issues, if not in a rate
4 case, where to determine how the Commission should deal
5 with those.

6 I'm not -- again, I'm not asking for the
7 Commission to provide any sort of an award or payment of
8 any kind to my customer here, but these are matters that I
9 believe cry out to be brought to the Commission's
10 attention in this rate case. And as I said in my opening
11 statement, I fully expected Mr. Crockett to try to keep
12 this out of the record. And you can be sure, Your Honor,
13 if this were favorable information, he would be doing
14 everything he could to support putting it into the record.

15 MR. CROCKETT: If I could briefly respond.

16 The complaint docket was filed in January of '08.
17 It's Mr. Marks and his client's responsibility to move
18 that case forward. They have not really done that.

19 We will wind up litigating these billing issues
20 in both this docket and in the complaint docket where they
21 have already been raised and there is some discovery
22 proceeding. I would note that there is no other customer
23 that has intervened in this proceeding to raise customer
24 service and billing issues. There were no customers that
25 showed up on day one, yesterday, to make public comment

1 here.

2 So again, I would object to getting into the
3 minutia of the billing dispute between the two parties
4 because that will be handled in the docket that has been
5 set up to do that.

6 ALJ WOLFE: Mr. Crockett, I agree with you that
7 we shouldn't get into the minutia; however, I can see the
8 procedural predicament that Swing First is in. If they
9 don't bring up these issues, then in the other docket it
10 could be alleged or it could be charged that they didn't
11 bring them up here. And vice versa, it could have
12 happened the other way if the complaint docket had gone
13 forward before this docket.

14 As it is, there may be facts, whether they are
15 relevant or not or material, it doesn't -- I don't have to
16 decide that at this time. But I do not want to preclude
17 any party of this case from presenting evidence that they
18 may need in order to prove their case.

19 And I might also add that the parties have had
20 ample opportunity to try to settle these issues before
21 this rate case proceeding, and that is what I would rather
22 have seen. Because I'm sure there is some way, whenever
23 there is a dispute between a customer and a company, there
24 should be way for the parties to come to an amicable
25 solution. That is my belief. And the fact that it hasn't

1 happened, it's not -- there is nothing I can do about that
2 except to allow the parties to put evidence on. And the
3 company is certainly free to put evidence on that
4 contravenes the evidence that Swing First is putting on.

5 I don't know what else to say except that I think
6 due process requires that we allow a customer to present
7 evidence that they have in a rate case proceeding when it
8 comes to the customer service issue. So I don't want to
9 get into the minutia either because there is another
10 opportunity possibly in a complaint proceeding to do so.

11 So, Mr. Marks, I would direct you to put on the
12 record the minimum amount of evidence that you need in
13 order to prove your case.

14 MR. MARKS: I will do the best I can, Your Honor.

15 THE WITNESS: Your Honor, I don't think there is
16 a question pending. Can I take a break before you ask
17 one?

18 ALJ WOLFE: We can take a break. That is no
19 problem. We can take a 15-minute break and come back.

20 MR. MARKS: The only issue I have, Your Honor, is
21 I have presented the exhibit to him, and he has had an
22 opportunity to read it. I don't think it would be
23 appropriate for him to discuss the exhibit with his
24 counsel while he's on break.

25 ALJ WOLFE: And I'm sure Mr. Crockett would not

1 have any objection to refraining from discussing this
2 exhibit with your client during the break.

3 MR. CROCKETT: We won't discuss it.

4 ALJ WOLFE: Okay. We will come back here in
5 10 minutes. We will be back here at 1:50.

6 (Whereupon, a recess was taken from 1:41 p.m.
7 until 1:55 p.m.)

8 ALJ WOLFE: Let's go back on the record.

9 Mr. Marks.

10 MR. MARKS: Thank you, Your Honor.

11 Q BY MR. MARKS: Mr. Tompsett, when we took a break
12 you had before you what has been marked as Exhibit SF-20.

13 Have you seen this before?

14 A. Yes.

15 Q And what is it?

16 A. It's an e-mail that I sent to David Ashton on
17 December 3rd, '07.

18 Q And I would like you to look at the third
19 paragraph, please, and I would like you to read that into
20 the record.

21 A. It says, "We will continue to try to deliver as
22 much effluent to the golf course as we can, but the other
23 part of the equation is that the golf course does not
24 generate any wastewater. All effluent delivery is based
25 on flows generated from the subdivision."

1 Q What did you mean by that?

2 A In paragraph 2, I'm referring to a portion of the
3 contract that Mr. Ashton and I had been discussing. There
4 is another piece of that same contract, the effluent
5 delivery agreement with the golf course that was signed
6 prior to Mr. Ashton that talks about that the subdivision
7 was required to accept a minimum amount of effluent on a
8 daily basis.

9 Q Were you talking about a minimum amount here? It
10 looks like you are trying to talk about delivering as much
11 as you can?

12 A It says both. The intent was both, that we will
13 be delivering effluent and that we -- but it's based on
14 what is being generated by the plant.

15 And like I said, part of -- and I don't have that
16 language from the contract here in front of me -- but
17 there was language that said there was a minimum amount of
18 effluent that the golf course needed to take as well.

19 Q I'm struggling with this, Mr. Tompsett. I don't
20 see that anywhere in these two sentences here.

21 You will try to deliver as much effluent to the
22 golf course as you can, but the golf course doesn't
23 generate any wastewater.

24 Is that some kind of limit on your ability to
25 deliver effluent to the golf course, the amount of the

1 effluent that the golf course generates?

2 A. No. This is only taken on a small -- on a
3 microscopic view of what that entire contract says. I'm
4 sure you have seen it, and I don't have it in these
5 documents.

6 But another portion of the document talks about,
7 you know, how the effluent is generated and that it would
8 be a minimum delivery to Johnson Ranch and it would be
9 delivered when available.

10 Q. You had effluent available in 2007, did you not?

11 A. Yes. We had CAP water available also.

12 Q. Understood.

13 It says then, "The effluent delivery is based on
14 flows generated from the subdivisions."

15 What did you mean by that?

16 A. If there are no subdivisions generating
17 wastewater, there is no effluent being generated by the
18 plant.

19 Q. But there were subdivisions generating effluent;
20 correct?

21 A. Yes.

22 Q. And according to SF-18 you produced approximately
23 17 million gallons of treated effluent from the San Tan
24 Wastewater Treatment Plant; is that correct?

25 A. Yes, however, you say -- I assume the numbers are

1 correct, but that is what it says, yes.

2 Q And for the months of March through December of
3 2007 you provided less than 8 million gallons of effluent
4 to the golf course; is that correct?

5 A I think there's a piece missing still on this
6 chart because I think there was effluent -- there was more
7 effluent than that delivered to the golf course in March
8 or May through December.

9 Q Well, didn't we agree that the source for these
10 numbers was your spreadsheet at SF-17?

11 A Yes.

12 Q You intended that to be complete at the time you
13 provided it, didn't you?

14 A That was the intent, yes.

15 Q You have a tariff for selling effluent to
16 customers. I think we testified to that earlier.

17 A I don't recall testifying to it, but, yes we did.

18 Q Does your tariff restrict your effluent
19 deliveries by the amount of wastewater a facility
20 generates?

21 A The tariff wouldn't restrict that, no. It would
22 be physically restricted by what was available.

23 Q There weren't any physical restrictions limiting
24 your ability to deliver effluent to the golf course, were
25 there?

1 A. I'm sorry. Say that again.

2 Q. There weren't any physical restrictions limiting
3 your ability to deliver treated effluent to the golf
4 course, were there?

5 A. The only physical restrictions were that the San
6 Tan plant was only one -- for limiting the effluent
7 generated at San Tan, there were no physical limitations
8 on delivering it. There would be physical limitations on
9 what was generated is all.

10 Q. Your first sentence again in that paragraph
11 states that the golf course doesn't generate any
12 wastewater -- I'm paraphrasing -- so that limits the
13 amount of effluent that you can deliver.

14 Is that anywhere in your tariff?

15 A. That, no. The tariff doesn't have any
16 limitations on physical generation or -- it's strictly a
17 financial component of what we get charged for the
18 effluent.

19 What I was trying to indicate earlier is that
20 there is additional language in the document I'm referring
21 to in this e-mail that is not on here, and we would have
22 to look at that.

23 Q. Do you know what the Commission's policy is
24 towards the use of effluent for irrigation needs?

25 A. Whether -- in past orders, yes. The Commission

1 as a whole has -- I don't know if it's specific policy or
2 rule, but they do want them to use effluent rather than
3 groundwater on golf courses or it's their desire, put it
4 that way.

5 Q And Chairman Mayes has been one of the biggest
6 advocates of using effluent for golf course irrigation,
7 has she not?

8 A I would say that is accurate, yes.

9 Q How do your tariff prices for effluent and CAP
10 water compare?

11 A For effluent and tap water?

12 Q CAP water.

13 A Oh, CAP water. I'm sorry. The effluent is 62
14 cents per thousand and the CAP is 83 cents per thousand.

15 Q You're rounding up slightly; correct?

16 A Well --

17 Q It's 82.8 or something to that effect?

18 A Yes.

19 Q So we can use 83 cents as a rough estimate or
20 actually a pretty accurate estimate?

21 A Yes.

22 Q Per thousand gallons.

23 And the effluent rate is 62 cents per thousand
24 gallons; right?

25 A Yes.

1 Q Do you know if you were selling effluent from the
2 San Tan facility to builders for construction water uses
3 in 2007?

4 A I don't recall, no.

5 Q Do you recall whether you did or didn't or --

6 A I don't recall any specific instances, no.

7 Q Is that something that you do from time to time?

8 A Not typically, no, but we have sold effluent to
9 builders for construction work.

10 Q Okay. Let's finish up with SF-18.

11 Do you know when Mr. Ashton filed his informal
12 compliant with the Commission?

13 A The informal -- well, I think you filed actually
14 two complaints. There was a complaint to the consumer
15 services --

16 Q That is what I am calling informal.

17 A Okay. It was in the -- I believe it was in the
18 fall of '07 sometime.

19 Q Would you accept subject to check it was in
20 November of 2007?

21 A Subject to check it sounds about right.

22 Q Starting in 2008 then after Mr. Ashton filed his
23 informal complaint, your effluent sales increased
24 dramatically, did they not?

25 A Again, I think we are still discussing SF-18 kind

1 of in a vacuum.

2 When we started talking about the CAP water, if
3 you just look at this snapshot in time, as far as effluent
4 here, there was CAP water being delivered in '07 to the
5 golf course at the same time effluent was being generated.
6 That contract ended, and then I think there were only
7 two months in '08 that CAP was actually delivered to Swing
8 First Golf Course and the rest was all effluent.

9 So it's kind of a -- I want to be clear. We are
10 not looking at all the pieces of water delivery at the
11 same time.

12 Q Well, I have allowed you the latitude to make
13 that explanation.

14 Now, my question is, your effluent sales in 2008
15 after Mr. Ashton filed his complaint with the Commission
16 went up dramatically, did they not?

17 A. According to this chart, yes.

18 Q And we have identified the source for this chart
19 as being the information that you provided; correct?

20 A. Yes.

21 Q We are going to turn to another topic now. I
22 know you would like to keep going on this one if you
23 could, but --

24 I have provided to you a document titled -- or a
25 document that has been marked as Exhibit SF-21.

1 Do you have that with you?

2 A. Are we done with 18 and 20?

3 Q. Yes, we are.

4 A. Okay.

5 ALJ WOLFE: Is the witness moving SF-20? It
6 hasn't been moved.

7 THE WITNESS: Can I do that?

8 MR. MARKS: And I will go back and do that. I
9 realize I hadn't.

10 I will move SF-20.

11 ALJ WOLFE: Is there any objection to SF-20?

12 MR. CROCKETT: None that I think would be upheld,
13 so I will not object.

14 ALJ WOLFE: Okay. Let the record reflect there
15 is no objection to SF-20, and it's admitted.

16 (S-20 was admitted.)

17 THE WITNESS: Again, I'm sorry, Your Honor.

18 Q. BY MR. MARKS: 21 and 22 we are looking at. I
19 put them in the corner.

20 A. I'm sorry. I was looking at the wrong pile.

21 Q. It's a new pile.

22 A. Okay.

23 Q. And I promised that I would not spend a long time
24 with these. I know those are large documents, but I
25 wanted to provide the total response.

1 And when you have SF-21, if you could take a
2 quick look at that and let me know when you are done.

3 A. Okay. This is a complaint, yes.

4 Q. You have looked at it?

5 A. Yes.

6 Q. Okay. And SF-21 was in the complaint case, and
7 it's titled "Revised Response to 1.1 dated 10/17/2008";
8 correct?

9 A. Yes.

10 Q. And the question was to please provide copies of
11 all bills rendered by Johnson Utilities to Swing First
12 from December 2004 to the present; correct?

13 A. Yes.

14 Q. And then you provided bills from December -- on
15 or after December 31st of 2004 to June 30th of 2008; is
16 that correct?

17 A. Well, the first bill is March of '06.

18 Is that correct?

19 Q. That is the first bill I received from you.

20 A. Okay.

21 Q. I'm reading the response as opposed to going
22 through the exhibits and the exhibit attachments.

23 A. Okay. Yes, there are a lot of bills attached.

24 Q. And in fairness, Mr. Tompsett, these are only the
25 CAP and the effluent bills. You also, if I remember

1 right, provided copies of all bills for the other four
2 accounts -- I believe there are four other accounts for
3 Swing First Golf; is that correct?

4 A. I don't recall specifically. We provided a lot
5 of bills.

6 Q. If you would accept subject to check that this is
7 just the effluent and CAP bills that were provided.

8 A. Subject to check, okay.

9 MR. CROCKETT: Just so I'm clear, Mr. Marks, you
10 said that you removed the other bills from what you
11 provided here as SF-21?

12 MR. MARKS: Yes. I thought it was fat enough
13 already, and I wasn't going to ask any questions.

14 MR. CROCKETT: Fair enough.

15 MR. MARKS: I would move SF-21.

16 ALJ WOLFE: Is there any objection?

17 MR. CROCKETT: No, Your Honor. I guess just with
18 the understanding that the request asked for all bills,
19 and I just wanted to make sure that -- I think it's clear
20 on the record that this is an excerpt to the portion of
21 the response that we gave to the data request.

22 ALJ WOLFE: Mr. Marks, all the responses were
23 provided in response?

24 MR. MARKS: Well, there were no bills provided
25 before, as the witness has identified, before roughly

1 March 31st of '06. And as I understand, they provided all
2 the bills that they believe were available. And I did not
3 pursue the matter further, so I consider this to be
4 responsive.

5 ALJ WOLFE: Is that acceptable?

6 MR. CROCKETT: That is acceptable.

7 ALJ WOLFE: Okay. SF-21 is admitted.

8 (SF-21 was admitted.)

9 MR. MARKS: And this would have been 200 pages if
10 I included all of them. I didn't think we needed to
11 burden the record with all of them.

12 I will also note that one thing that was not on
13 these originally is in the upper left-hand corner I put
14 Bates numbers on here that start SF-000001 and then the
15 last page is 57. So these go 1 through 57, and I wanted
16 to make it easier when we are referring to the documents.
17 That was not part of the original response.

18 ALJ WOLFE: That is noted.

19 MR. MARKS: Has Your Honor ruled on it?

20 ALJ WOLFE: Yes. It's admitted.

21 MR. MARKS: Okay. Thank you.

22 Q BY MR. MARKS: Now, it is somewhere buried here,
23 but my understanding is that in late 2006 or thereabouts
24 you move from an old billing system to a new billing
25 system at Johnson Utilities; is that correct?

1 A. I don't think it was an old and new. I think it
2 was an upgrade to our old system.

3 Q. An upgrade?

4 A. Something like that.

5 Q. Now, these bills in SF-21, these are not copies,
6 and I don't believe you represented them to be copies of
7 the actual bills that were sent to the customer; is that
8 correct?

9 A. No, I believe these were reprinted.

10 Q. And basically you took the information in the
11 billing system and whatever magic you have to do told the
12 billing system to reprint the bills; correct?

13 A. I'm not really involved in the day-to-day billing
14 process, so -- or bill generation either, so I'm not sure
15 how they did it or who did it.

16 Q. But you are not representing that these are
17 copies of the original bills that we sent to the customer,
18 are you?

19 A. No.

20 Q. All right. Let's turn to the one that is Bates
21 stamped No. 2, which is the next page. And up in the
22 upper right-hand corner there is a designation that says,
23 00120362-01.

24 What is that number?

25 A. That would be the account number or this account

1 number in our billing system.

2 Q And that account number was for treated effluent?

3 A I don't know. It doesn't say on here whether
4 it's effluent or CAP, not that I see.

5 MR. MARKS: Counsel, I will refer to -- and this
6 might make things go faster actually -- to his responses
7 to 2.1 and a few others after that in the complaint case.
8 If you have a copy and want to give it to him or I can
9 give it to him.

10 MR. CROCKETT: I did not bring a copy of our data
11 requests and responses from the complaint case.

12 MR. MARKS: Do you mind if I give it to him to
13 refresh his recollection?

14 MR. CROCKETT: No, but if you are going to be
15 referring to it, I would like to get a copy so I can
16 follow along.

17 MR. MARKS: I don't mind if you stand up there
18 with him or whatever you would like to do. Otherwise we
19 can do this. I think it will speed things up. I can show
20 him these responses that have the account numbers on them
21 and what they refer to.

22 MR. CROCKETT: Okay. That is fair enough. I'll
23 look over Mr. Tompsett's shoulder, if that's okay with
24 Your Honor.

25 ALJ WOLFE: Or why don't you show it to Counsel

1 first.

2 And I'm not opposed to you looking over his
3 shoulder.

4 Q BY MR. MARKS: After you have had a chance to
5 look that over, I will ask the question again.

6 A Okay.

7 Q Okay. So account 00120362-01 is for treated
8 effluent; correct?

9 A That is what it says in the data -- 2.1 data
10 response from the complaint proceeding.

11 Q And that was prepared by you?

12 A Yes, it was. I didn't review any of the
13 complaint documents before this hearing, though, or
14 haven't reviewed them recently, I should say.

15 Q Are you in any way disputing that that is an
16 effluent account?

17 A No, I'm not -- either I or someone at my
18 direction researched it.

19 Q And there are some other bills in here as we go
20 through here that has the same account number except it's
21 02 instead of 01.

22 Is that also a treated effluent account?

23 A Yes. The complaint proceeding data request 2.2
24 says 120362-02 is an effluent account.

25 Q And there is another account included in these

1 responses, 0019200-01.

2 Is that a CAP water account?

3 A. I'm sorry. What was the number again?

4 Q. 0019200-01. Can you refer to 2.4, your response?

5 A. Yes. On the data request, complaint proceeding
6 data request 2.4, the response is that it is a CAP water
7 account.

8 Q. And similarly that number was changed later to
9 replace the 01 with a 02; correct?

10 A. Yes. Complaint proceeding data request 2.5 says
11 that the 200-202 account is a CAP water account.

12 Q. All right. Looking at that very first bill
13 there, the one that has the 02 number on it, that is for
14 March 31, 2006; correct?

15 A. Oh, I'm sorry. Yes. At the top?

16 Q. Yes.

17 A. Yes.

18 Q. But these are your bills, but that is where I get
19 them.

20 A. Yes. Yes. As I said, I'm not in the day-to-day
21 billing process.

22 Q. And what was the rate that was charged Swing
23 First Golf -- let me back up.

24 We have agreed that this is an effluent bill?

25 A. Yes.

1 Q And what was the rate that Johnson Utilities
2 billed Swing First Golf on for effluent on March 31st of
3 2006?

4 A It has a water -- the math isn't on here.

5 Q If you refer to your 2.7 response and see if you
6 agree that it was the 83-cent CAP water rate?

7 A Are you back in this last document here?

8 Q Yes, sir.

9 A Which number?

10 Q 2.7C.

11 A The data request says that -- again, this is
12 complaint proceeding data request 2.7C response. It says,
13 Johnson Utilities billed Swing First Golf 0.827 per
14 thousand gallons of effluent delivered on the referenced
15 bill. The effluent was incorrectly billed as a CAP water
16 rate due to a billing system error. The system error was
17 subsequently corrected and an adjustment was made.

18 Q So the short answer is, the customer was billed
19 the CAP rate of 83 cents on the March, 31, 2006 bill;
20 correct?

21 A Yes. And data request says it was subsequently
22 corrected.

23 Q Let's turn to the next bill. This is for April
24 of 2006. This is marked as Bates stamp 3.

25 Would you agree, subject to check -- and I

1 understand what you are going to say. We can make it
2 easier.

3 Subject to check and your assertion that it was
4 corrected at a later date, that the rate here was also at
5 the 83-cent CAP water rate?

6 A. Is that in another data request somewhere?

7 Q. 2.8.

8 A. Yes.

9 Q. And the next bill you also charged the 83-cent
10 CAP water rate for effluent; is that correct? You can
11 look at 2.9.

12 A. 2.9.

13 Q. You are catching on to the system now.

14 A. It appears so, yes.

15 Q. 2.10, you can turn to and we are going to look at
16 what has been marked as 05. This is the bill for June
17 30th, and this is an effluent bill also.

18 A. The complaint proceeding 2.10C response is the
19 same.

20 Q. So the record is clear here, you billed at the
21 83-cent CAP water rate; is that correct?

22 A. Yes, subsequently corrected in whatever the other
23 two-point-something was.

24 Q. The next bill dated July 31, 2006, again this is
25 an effluent bill?

1 A. Complaint proceeding 2.11C, it looks like it
2 references that. Same response.

3 Q. This is an effluent bill?

4 A. Yes.

5 Q. And you billed at the 83-cents CAP water rate; is
6 that correct?

7 A. Yes, and it was subsequently corrected, I guess.

8 Q. And the next bill in the sequence is for
9 August 31st of 2006.

10 This is also an effluent bill; is that correct?

11 A. Yes.

12 Q. And you billed at the CAP water rate here; is
13 that correct?

14 A. Yes, same account number.

15 Q. And that is yes? It was yes, that you billed at
16 the CAP water rate as well?

17 A. Yes.

18 Q. The next bill that you provided is for
19 September 30th, and that it is also an effluent bill?

20 A. Yes. Same account number, yes.

21 Q. And you also billed at the CAP water rate?

22 A. Yes, same response. In complaint proceeding
23 2.3C.

24 Q. I would like you now to turn to the next bill,
25 which is a break in sequence. And the next bill is for

1 December 31st of '06. And this now is the first bill with
2 the 02 suffix on it; is that correct?

3 A. In this sequence of documents, yes.

4 Q. That you provided me?

5 A. Yes. Unless something was removed or something
6 is in here somewhere, it is. The next document sequence
7 was 02.

8 Q. And this was an effluent bill also?

9 A. Yes. Complaint proceeding 2.2 response, it says
10 that it's an effluent account, yes.

11 Q. And you also billed this at the CAP water rate;
12 correct?

13 A. Was there a response in the complaint proceeding
14 with these data request numbers? That is what I'm trying
15 to find.

16 Q. We are looking at December's bill still, and that
17 would be 2.17. We skipped a few.

18 A. Yeah.

19 Q. I told the judge I would move this along.

20 A. Yeah, I jumped ahead a little bit too.

21 It looks like in the complaint proceeding, again,
22 the 2.17 response was the same as data request 2.7C,
23 which -- yeah, it says that it was billed at 0.827 per
24 thousand and was subsequently corrected and adjusted. An
25 adjustment was made.

1 Q And let's look at your response of 2.18, and we
2 will look at what has been Bates stamped as 10. And this
3 is the January 31st of '07 bill.

4 By the way, the second date there, is that the
5 date that the payment is due, the February 15th of '07?

6 A Yes. If you look down at the bottom it says it's
7 the consumption or 12/31/06 to 1/31/07. And so again,
8 that was the date it was billed out.

9 Q And this is an effluent bill again?

10 A 36202 is an effluent account, yes.

11 Q And again, this was billed at the CAP water rate;
12 is that correct?

13 A Per the complaint proceeding 2.18C, yes.

14 Q Would it be easier to just use your calculator to
15 divide those or do you want keep using the data request?
16 I don't care.

17 A It's easier to refer to what we have down here.

18 Q Let's move on to Bates stamp 11. That is the
19 bill for February 28th of '07.

20 Also an effluent bill?

21 A 362, yes, and same response on 2.19C.

22 Q Which means, so the record is clear, that this
23 was bill at the CAP water rate?

24 A Yes, and correct.

25 MR. CROCKETT: Your Honor, given that there is a

1 data request that appears to address these, maybe it might
2 be easier to simply introduce this data request rather
3 than go through all of these bills.

4 MR. MARKS: I'm not going to use the entire data
5 request, and I only have another -- maybe another seven or
6 eight of these bills to talk about, so we are probably
7 more than two-thirds now.

8 ALJ WOLFE: And they would be the same question?

9 MR. MARKS: Yes.

10 ALJ WOLFE: Can you just ask the same question?

11 MR. MARKS: Well, I'm going on go to CAP water,
12 and I need to ask about the CAP and the rate that was
13 billed for the effluent account.

14 So we're basically done with the effluent
15 accounts. I think I have --

16 Here is what we could do. If we would look at
17 11/12, 13, 14, and 15.

18 ALJ WOLFE: You are referring to the Bates stamp
19 numbers?

20 MR. MARKS: Well, that doesn't quite work that
21 way. Let's go through 14.

22 Would you agree that 11 through 14, which are the
23 bills for February, March, April and May of 2007, that
24 they are all for the effluent?

25 A. So bills dated 12/28/07, 3/31/07 -- well, no.

1 Hold on.

2 The data request changed for 3/31/07. So if you
3 can --

4 Q I'm sorry. We can skip 14. It doesn't appear to
5 have any usage that month. Let's just do 11, 12, and 13,
6 so it's the February, March, and April bills.

7 A Okay. I'm sorry. I lost track of what I was on.

8 Q Are those all effluent bills?

9 A They are all effluent account, yes.

10 Q And were those all billed at the CAP water rate
11 of 83 cents?

12 A Up through 13?

13 Q Yes, sir.

14 A Bates 13?

15 Q Yes, sir.

16 A Yes. And that is addressed in complaint
17 proceeding 2.21C.

18 Q Okay. And I would like you to skip ahead
19 again -- I'm trying to save time here -- to the
20 January 31, 2008, bill, and that is Bates stamp 20.

21 A Okay. I have -- I'm on the Bates stamp 20.

22 Q Is this still an effluent bill? You can refer to
23 data request 2.24.

24 A Yes, same account number. And the complaint
25 proceeding data request 2.24C says that the flow meter on

1 that account was replaced on December 21, 2007. The final
2 meter reading for the replaced meter was 19,474,000
3 gallons on December 21st. And then it goes on to explain
4 how the calculation was arrived at for the meter readings
5 and reading dates described on the invoice or Bates number
6 20, the invoice dated 01/31/08.

7 Q And the rate that was billed in January of 2008,
8 was that the CAP water rate of 83 cents?

9 A Data request doesn't --

10 Q 2.24E.

11 A 2.24E?

12 Q Yes.

13 A Yes. It was CAP water rate.

14 Q All right. Just a few more here.

15 Let's go to -- I'm trying to skip ahead here.

16 MR. CROCKETT: Can we back up one? I'm just
17 doing the math. Were we looking at the Bates number that
18 was SF-20?

19 MR. MARKS: Yes, sir.

20 MR. CROCKETT: And we were trying to determine
21 whether that was billed at the effluent rate or CAP rate;
22 is that correct?

23 MR. MARKS: Yes, sir.

24 MR. CROCKETT: And Mr. Tompsett's response was
25 that it was billed at the CAP rate?

1 MR. MARKS: That is what it says.

2 MR. CROCKETT: Is that what the data request
3 says? Because I'm getting an effluent rate when I do the
4 computation on my calculator.

5 MR. MARKS: The data response refers us to your
6 data response 2.7C, which is referring to the CAP water
7 rate. But if you want to give him a calculator, he can
8 correct that on the record. I don't have a problem with
9 that. I didn't independently do the math.

10 MR. CROCKETT: Could I have quick moment to
11 confirm?

12 ALJ WOLFE: Certainly.

13 (Discussion off the record.)

14 ALJ WOLFE: Let's go back on the record.

15 There was a small conference about the --

16 Q BY MR. MARKS: Yes. Mr. Tompsett, did you want
17 to, in fairness, amend your answer to my last question
18 about the January 31st of '08 bill?

19 A Yes, I guess I will.

20 In doing the math and taking the usage on the
21 bill of 2,535,000 gallons and a water usage rate of
22 \$1,571.70, and if you do the division, the water usage is
23 at 62 cents per thousand.

24 Q Thank you, Mr. Tompsett.

25 MR. CROCKETT: And, Your Honor, I will say that

1 I'm a little nervous about a couple prior ones, so we will
2 check them off-line and then report back if we need to
3 correct anything in the answers.

4 ALJ WOLFE: Okay. Thank you.

5 Q BY MR. MARKS: Now, we will jump way ahead in
6 here. I will give you the Bates number here in a minute.
7 It's Bates No. 38, and this is a bill dated December 31st
8 of 2006 -- I'm sorry. Make that 39, same date.

9 A Bates 39?

10 Q Yes.

11 A Okay. I have that.

12 Q And if you want to refer to the complaint
13 proceeding responses, it's 2.28. Let me know when you are
14 ready.

15 A Okay.

16 Q This document is a CAP water bill; is that
17 correct?

18 A Yes. Complaint proceeding response 2.5 says
19 account number 200-02 is for CAP water, yes.

20 Q And your authorized rate for CAP water is 82.7
21 cents per gallon; is that correct?

22 A Yes.

23 Q And what did you bill Swing First Golf for in
24 this December 31st bill?

25 A Complaint proceeding 2.28 data request subsection

1 C it says, "Johnson Utilities billed Swing First Golf
2 \$3.75 per thousand gallons of CAP water on the referenced
3 bill."

4 Q All right.

5 A And then 2.28, in the complaint proceeding still,
6 subsection D, says, "CAP water on the referenced bill was
7 incorrectly billed at the potable water rate. The billing
8 error occurred when the new account was established. The
9 error was subsequently corrected, and an adjustment was
10 made to Swing First Golf's CAP account." Then it refers
11 to other data responses.

12 Q Okay. We have two more in this set that I want
13 to ask you about.

14 If you turn to the next Bates stamp, 40,
15 January 31st of '07.

16 Is this a CAP water bill?

17 A It's a CAP water number, yes.

18 Q And this is also billed at \$3.75 per thousand
19 gallons; is that correct?

20 A I have to do the math on this one. Hold on a
21 second.

22 Using calculator, yes, \$3.75.

23 Q Okay. Let's move to Bates stamp 43. If you want
24 to refer to the data requests, it's 2.29.

25 Is this a CAP water bill?

1 A. Still the CAP account number, yes.

2 Q. And is this dated April -- I'm sorry --
3 April 30th of '07?

4 A. Yes.

5 Q. And the usage is billed at \$3.75; is that
6 correct?

7 A. Yes. And data request compliant proceeding 2.29,
8 subsection C, refers back to 2.28C and D where the CAP
9 water account was incorrectly set up. 3.75 was charged
10 and then the error was subsequently corrected and an
11 adjustment was made to Swing First Golf's CAP account.

12 Q. All right. If you would look at -- I have lost
13 track myself.

14 Did I ask you about 45 yet?

15 A. No. I just addressed 43.

16 Q. Okay. 45 for June 1st of '07.

17 A. Same response as Swing First Bates SF-43, which
18 was originally billed at 3.75, and still is a CAP account
19 number, and the billing error occurred when the account
20 was set up. The error was subsequently corrected and an
21 adjustment was made to Swing First Golf's CAP account.

22 Q. What is the total amount due now in the June 1st
23 of '07 bill on the CAP water account?

24 A. I'm sorry. Can you say that again?

25 Q. What is the total amount shown as due to the

1 June 16th '07 CAP water account?

2 A. Total dollars due is \$100,555.60.

3 Q. Turning to the next Bates -- I'm not going to ask
4 you about rates here -- if you turn to No. 46 -- and this
5 is the bill for July 31st of '07; is that correct?

6 A. Yes.

7 Q. And it shows the previous balance of \$1,555.60
8 with the new balance due of \$112,814; is that correct?

9 A. Yes. That's correct.

10 Q. Turning to the next bill, August, 31, 2007, we
11 show the previous balance of, call it \$113,000, and then
12 we have the current charges and the total due that was
13 submitted to the customer was \$122,000; is that correct?

14 A. Yes. That's correct.

15 Q. Turning to the next bill, September 30th of '07,
16 we show the previous balance of \$122,000 and the total
17 amount due in the bill to Swing First is \$125,716 roughly;
18 is that correct?

19 A. Roughly, that's correct. Yes.

20 Q. The bill submitted on October 31st of '07 shows
21 the previous balance of \$125,715.75, and there is a new
22 balance of \$130,277.01; is that correct?

23 A. Yes. That's correct.

24 Q. And the last one I'm going to ask you about is
25 the November of '07 bill. It shows a previous balance of

1 \$130,277 and a payment of \$52,850; correct?

2 A. Yes.

3 Q. And with the current usage the total due of
4 \$72,841.21; is that correct?

5 A. Yes. That's correct.

6 Q. Okay. Thank you.

7 A. Can you wait just a minute, please.

8 Okay. Then the rate on this bill is at 0.827.

9 Q. Yeah, if you would accept subject to check that
10 starting with the July -- what has been Bates stamped as
11 46, starting with the July 31st of '07, that the rate was
12 subsequently billed at CAP water rate, the 82.7 cents for
13 the balance of these?

14 A. I'm sorry. Can you say that again?

15 Q. Would you accept starting with the July bill that
16 the correct CAP water rate was charged?

17 A. Yes. The July '07 bill was at 0.827 per
18 thousand.

19 Q. And the remainder of the bills for 2007?

20 A. That is the only one I did the math on.

21 Q. I did the math.

22 Would you accept subject to check that they
23 continue to be 0.827?

24 A. Subject to check, yes.

25 Q. Now, I would like you to turn to SF-22.

1 A. 22?

2 Q. SF-22, yes. That is the other fat one that is up
3 there. It may still be in the corner.

4 MR. CROCKETT: We are referring to the exhibit
5 and not Bates number?

6 MR. MARKS: We're referring to the exhibit. It's
7 a new exhibit. We changed exhibits. Thank you.

8 ALJ WOLFE: It's a new exhibit.

9 Mr. Marks, you might want to read the caption.

10 MR. MARKS: I want him to locate and put it in
11 front of him first, the SF-22. If he hasn't, I will read
12 the caption.

13 Q. BY MR. MARKS: Do you have that in front of you?

14 A. Yes. I just want to make sure I was clear on
15 where the finish point was with SF-21.

16 Q. I have just a couple of questions where I will
17 need you to look back at SF-21.

18 A. Okay. Are we going to refer to the complaint
19 proceeding responses 2.31 and 2.32?

20 Q. No.

21 A. Well, I think -- I would think that that would
22 help Judge Wolfe understand what happened with the account
23 balances, because it appears they were correct in the data
24 responses.

25 Q. Well, I'm asking the questions now. If your

1 counsel wants to put something in as an exhibit or ask you
2 some follow-up questions on it, he is certainly free to do
3 so.

4 A. I'm not exactly sure how that works, so --

5 ALJ WOLFE: I'm sure Mr. Crockett will take care
6 of it.

7 THE WITNESS: Okay.

8 Q. BY MR. MARKS: He has been here before.

9 A. Okay.

10 MR. CROCKETT: I'm just trying to locate -- I
11 haven't been paying attention for the last 30 seconds
12 because I'm trying to locate my copy of this data request
13 and response.

14 MR. MARKS: Do you want to take --

15 MR. CROCKETT: If we could just take two minutes.

16 ALJ WOLFE: Sure. Let's go off the record so you
17 can locate that.

18 (Discussion off the record.)

19 ALJ WOLFE: We will take a five-minute break.

20 (Whereupon, a recess was taken from 2:55 p.m.
21 until 3:06 p.m.)

22 ALJ WOLFE: Let's go back on the record.

23 Mr. Tompsett, why don't you pull your mike down.
24 Thank you.

25 Mr. Marks.

1 MR. MARKS: Thank you, Your Honor.

2 Q BY MR. MARKS: Mr. Tompsett, I ask you to take a
3 look at the document that had been marked as Exhibit
4 SF-22.

5 Do you have that?

6 A Yes.

7 Q And this is a copy of a -- well, I will just read
8 the caption here, "Swing First Golf, LLC Responses to
9 Johnson Utilities' Third Set of Data Requests" in the rate
10 case dated April 6, 2009. And this is a supplemental
11 response to Johnson Utilities' question 3-27.

12 Are you with me so far?

13 A Yes.

14 Q And the question said, "On page 6 of his revised
15 direct testimony (lines 20 and 21), David Ashton states:
16 'I was naive in believing Utility was following the law,
17 so we did not keep a file of paid utility bills.' With
18 regard to this testimony, please answer the following
19 questions."

20 And question B was, "Please provide copies of all
21 Johnson Utilities bills in possession of SFG," or Swing
22 First Golf.

23 Are you with me?

24 A Yes.

25 Q And the supplemental response provided by

1 Mr. Ashton was, "I have attached copies of additional
2 bills that we have located."

3 And then if you will turn to look at the
4 attachments then, you will see all the bills that he was
5 able to locate, and they were provided to you, as I said,
6 on April 6th in this docket; is that correct?

7 A. It is dated April 6th, '09.

8 Q. Have you looked at these?

9 A. I don't recall specifically looking at these, no.

10 Q. I would like you to look at -- and again, I Bates
11 stamped these documents, and I picked up on the cover
12 sheet of the Bates stamping at 203. I completed all the
13 bills, as I said, that were included for the restaurant
14 and the various other accounts, and I concluded at 202, so
15 I picked up at 203 with SF-22. So the number in the upper
16 left-hand corner, again, were not in the original
17 documents that were provided. I wanted to make that
18 understood on the record.

19 Is that agreeable?

20 A. I understand.

21 Q. Okay. I would like you to look at what has been
22 marked as No. 204. That is the very first page after the
23 cover sheet.

24 A. Yes.

25 Q. This bill looks a little different than some of

1 the other bills -- than the other bills that we have been
2 looking at.

3 Is this an example of an older bill, what they
4 looked like when they were sent to customers at the time?

5 A. They looked like it, yes.

6 Q. And things are located in different places on
7 these bills, but let's look on the right side. This is a
8 bill that appears to be dated August 17th of 2006; is that
9 correct?

10 A. Yes.

11 Q. Do you have any reason to doubt that this is an
12 accurate copy of the bill that the customer had in his
13 possession?

14 A. If they produced it and testified that that is
15 what it is, I have no way to dispute it, I guess.

16 Q. I would like you to look at the first account
17 that is located in the big box, and it says, "Account
18 120362-01." And then underneath that it says, "Effluent
19 readings for May 2006."

20 Is it your understanding -- and you can go back
21 and look at the other bills that we've talked about --
22 that this is the effluent account?

23 A. Yes, it is.

24 Q. Okay.

25 A. It's the effluent account number.

1 Q I would like you to go back now in SF-21 and look
2 at No. 4. This is the bill you provided me in discovery
3 and it has -- this is -- well, let me back up.

4 You agreed that this was an effluent bill;
5 correct?

6 A Which Bates?

7 Q Bates stamp 4 and it's from May 31st of '06.

8 A Okay. Yes, it is the effluent account number.

9 Q And it's the same effluent account number that
10 appears on 204; is that correct?

11 A Yes.

12 Q Okay. And there is a start read and an end read
13 on 204. Start read is 17,727 gallons. And do I see that
14 same number as the previous meter reading on Bates stamp 4
15 of 17727000?

16 A I'm sorry. Do that again, please.

17 Q Would you compare the start read on what has been
18 marked as 204 to the start read on what has been marked as
19 04.

20 A Okay.

21 Q Are they the same?

22 A Yes.

23 Q All right. And the end read of
24 28,373,000 gallons, are they the same?

25 A Yes.

1 Q Now, I will need you to use your calculator on --
2 well, I will wait a minute.

3 Now, I would like you to look down to the next
4 line, and this bill is -- this reading is for account
5 number 119200-01.

6 A On 204?

7 Q On 204, yes.

8 A Okay.

9 Q And is that the CAP water account?

10 A Yes, CAP account number.

11 Q Now, I would like you to look at for the
12 comparable CAP bill, look at No. 31.

13 A In SF-21?

14 Q In SF-21, yes, sir.

15 A Hold on. We are using 4 and -- what is the other
16 number? What is the second number?

17 Q Actually I only started to ask you if it was the
18 same account because the 119200-01 account number appears
19 on both bills.

20 MR. CROCKETT: Mr. Marks, what is the second?
21 What's the Bates number on the third bill from SF-21?

22 MR. MARKS: We are comparing 31 to 204 now.

23 THE WITNESS: 31, okay.

24 Q BY MR. MARKS: I'm sorry if I wasn't clear.

25 A Yes. They are the same account number.

1 Q. And again, the start read is 351,197,000 gallons
2 on 204, and that is the same previous read that we see on
3 31; is that correct?

4 A. Yes.

5 Q. And the end read of 359,612,000 gallons on 204 is
6 the same present read that we see in No. 31; is that
7 correct?

8 A. Yes. That's correct.

9 Q. So it appears to be the same usage for the CAP
10 water and for the effluent that are covered by bills Bates
11 stamp numbered 04 and 31; is that correct?

12 A. Yes.

13 Q. I calculate -- first of all, you billed, it
14 appears to be -- you did not bill separately for the two
15 commodities in this bill; is that correct?

16 A. SF-204?

17 Q. Yes.

18 A. Yes, it looks like they were combined on the one
19 bill.

20 Q. And I calculated -- and you can confirm or take
21 subject to check -- that the rate that you charged was
22 64.24 cents per thousand gallons; is that correct?

23 A. Well, I'm sorry. You are giving me a calculation
24 on SF-204?

25 Q. Yes, sir.

1 A. Is that a blended number? Is that what you are
2 asking?

3 Q. Well, all I can do -- there are no other numbers
4 on here -- is I take total gallons -- well, I take the
5 total flat fee and divide by the total number of gallons,
6 and I get 64.24 cents per thousand gallons; is that
7 correct?

8 A. Yes, doing the math. The math is correct, yes.

9 Q. I would like you to turn now to SF-20 -- I'm
10 sorry -- still in 22 -- I'm getting tongue-tied now.

11 A. Can I stop you a minute?

12 Q. Yes.

13 A. Well, I guess I'm a little confused because you
14 are right; there aren't any other numbers on there. It
15 says flat fee. You basically have just sum mean average
16 from the subtotal flat fee bill and divide it. It's a
17 blending of what looks to be an effluent volume rate and a
18 CAP volume rate on SF-204.

19 So I guess I want to point that out. I'm not
20 quite sure. The math worked, but I'm not quite sure what
21 the significance is.

22 Q. Okay. That is fair enough.

23 Can we move on to 205?

24 A. Okay.

25 Q. And this is another one of the old format bills;

1 is that correct?

2 A. Yes.

3 Q. I would like you to compare the start and end
4 read on this Bates stamp 205 going back to SF-21 to Bates
5 stamp 07.

6 A. Okay. Say that again. I'm on --

7 Q. Keep your finger on 205, and now go back to
8 No. 7.

9 A. In 21?

10 Q. Yes, sir.

11 A. No. 7, okay.

12 Q. What is the effluent rate that is charged on --
13 I'm sorry. I asked you to look at them, but you haven't
14 answered the question. I didn't ask the question. I ask
15 you to compare them, and you did them fairly.

16 Are they the same start and end reads on the two
17 bills? I see 49,469,000 gallons start, 61,116,000 gallons
18 end on both bills; is that correct?

19 A. Yes.

20 Q. So the usage is the same?

21 A. Yes, the usage -- the calculated usage on SF-205
22 matches the calculated usage on SF-07 or what appears to
23 be the same time period.

24 Q. And I calculated effluent rate on this bill was
25 62 cents per thousand.

1 Would you accept that subject to check?

2 A. Which bill? SF-205?

3 Q. SF-205.

4 A. All right, 62 cents.

5 Q. All right. If you turn to 206, which is the next
6 page, and I want you to compare that to back in the
7 previous exhibit, 21, to No. 8.

8 Are you there?

9 A. Yes.

10 Q. I see a start read of 61,116,000 gallons and end
11 read of 65,005,000 gallons for both; is that correct?

12 A. Yes, with a total usage of 3,889,000 gallons on
13 both.

14 Q. Okay. And on 206 I calculate the effluent rate
15 that was charged the customer was 62 cents per thousand;
16 is that correct?

17 A. That's correct.

18 Q. Okay. 207, and this is my -- this is the last of
19 the old bills. I would like you to compare on this -- I
20 don't see -- I'm sorry.

21 My question is: I looked through what you turned
22 over in SF-21. I could not find a comparable bill with
23 this usage anywhere in what you turned over.

24 A. I'm not -- I don't know what document you started
25 at. Could you do that again?

1 Q Looking at 207 --

2 A 207, okay.

3 Q -- I see start read -- it's supposedly for
4 service month October of 2006 -- a start read of
5 65,005,000 and end read 71,057,000 gallons, total
6 consumption 6,052,000 gallons. I could not find a
7 comparable bill in SF-21.

8 To your knowledge, is there a comparable bill?

9 A I don't know if there is one. It appears there's
10 a gap in there from the reading on 9/30/06. On SF 08
11 65,005,000 was the ending reading, and the next bill is
12 12/31/06, which is SF 09, and it has a start reading same
13 as this end reading.

14 I'm not aware if there has been one or not.

15 Q Okay. I did my best to match it up and couldn't
16 find it, so I'm going accept that you can't find one
17 either.

18 Could you calculate the rate for me on this bill?

19 A The 207?

20 Q Yes, sir.

21 A 62 cents per thousand.

22 Q Okay. Now, real quickly, 205, the bill for
23 service month August 2006, there is no pass-through
24 balance on here, is there?

25 A No, I don't see a pass-through balance on 205.

1 Q And for 206 for September 2006, there is no
2 pass-through balance on there, is there?

3 A SF-206?

4 Q Yes, sir.

5 A No, I don't see a pass-through balance.

6 Q And on 207 is there any indication of a
7 pass-through balance for service month October, 2006?

8 A Oh, no.

9 Q And similarly for those three bills -- 205, 206,
10 and 207 -- there is no mention of any -- or it's not
11 indicated that there is any payment that has been received
12 in connection with these bills, is there?

13 A It doesn't appear to show outstanding balance or
14 payment received, no.

15 MR. MARKS: Okay. Your Honor, I move SF-22 at
16 this time.

17 ALJ WOLFE: Mr. Tompsett, on number 205, 206, and
18 207, there is an invoice number on the top right-hand
19 corner, and it has invoice No. JU00476-REV.

20 Do you know what the significance of that is?

21 THE WITNESS: No, I don't, Your Honor.

22 ALJ WOLFE: Is there any objection to SF-22?

23 MR. CROCKETT: No, Your Honor.

24 ALJ WOLFE: SF-22 is admitted.

25 (SF-22 was admitted.)

1 Q BY MR. MARKS: Back to SF-21 briefly, I would
2 like you to look at No. 18, and we agreed that that was --
3 I'm sorry. I will wait until you get there. I am jumping
4 ahead.

5 A Okay. I'm sorry. SF-18?

6 Q Yes. Not the -- it's Bates stamp 18 in SF-21.

7 A Okay. I am at that.

8 I'm not sure if we were clear. We are going back
9 and forth between two --

10 Q I'm done with 22. And I would like you to look
11 at 21, at what has been Bates stamped as No. 18.

12 A Okay, well, I guess I was -- I wasn't sure that I
13 was done with 22, because when we were comparing back and
14 forth, the two account numbers are different. There is an
15 02 account and we were comparing it to an 01 account.

16 Q You can follow it up with your counsel.

17 A Okay. Okay. Now I'm on SF-18?

18 Q Yes, sir.

19 A Okay.

20 Q And this is the October 31st, '07 effluent
21 account bill; correct?

22 A It's the effluent account number, yes. And it's
23 dated 10/31/07.

24 Q And there was a credit balance. It says, "Do not
25 pay" of \$2,044.67; correct?

1 A. Yes.

2 Q. And then the comparable bill for CAP water would
3 be number 49; is that correct? That would be the
4 October 31st of 2007 CAP water bill?

5 A. Yes.

6 Q. And that has an outstanding total due balance of
7 \$130,277.01; is that correct?

8 A. Yes.

9 Q. And we went through earlier the source of that
10 number, and that was carried forward through all of '07;
11 is that correct?

12 A. I'm sorry. Source of what number?

13 Q. The \$130,277.01 number included all of those
14 previous balances that we went through in '07; correct?

15 A. I think that is correct.

16 Q. And that included the amounts that were billed at
17 \$3.75 per thousand; correct?

18 A. I think so, yes.

19 Q. Okay. Thank you.

20 Mr. Tompsett, do you have in front of you what
21 has been marked as Exhibit SF-23?

22 A. Yes.

23 Q. Could you identify that for the record, please.

24 A. It's an e-mail from David Ashton to -- it's
25 addressed to me. I assume that is who it is addressed to.

1 I sent it -- I sent -- it's a response to an e-mail I sent
2 him.

3 Q The top says "Brian," so this would have been
4 printed from your account?

5 A Yes. Let me read it, please.

6 Q Certainly.

7 A Okay.

8 Q All right. I would like you to look down at the
9 bottom, and it looks like something was forwarded. It
10 says "George" -- I don't know what that is -- and then
11 there is a line below that which appears to be your e-mail
12 to Mr. Ashton dated that same day.

13 Is that correct?

14 A I'm sorry? What was the question? The bottom
15 part is my e-mail to David.

16 Q So you agree it was your e-mail to David?

17 A Yeah.

18 Q And it's dated November 6th of 2007; correct?

19 A Yes.

20 Q Now, btompsett@qwest.net, is that your office or
21 personal account?

22 A My office account.

23 Q And could you read that for the record, please.

24 A Yes. It says, "Dave, the utility has
25 discontinued water delivery for golf course for

1 nonpayment."

2 Q And that was nonpayment of that approximately
3 \$130,000 balance that was shown in the previous bills that
4 we just discussed?

5 A The e-mail doesn't say. It just says nonpayment.

6 Q And so this -- on this date you discontinued
7 water delivery to Swing First Golf; correct?

8 A That is what this says, yes.

9 Q Now, my understanding is that you subsequently
10 restored service for a few days and then cut it off again;
11 is that correct?

12 A I don't recall specifically. It's probably in an
13 e-mail somewhere.

14 Q Would you accept subject to check that you
15 discontinued Swing First service for the second time on
16 November 20th?

17 A I don't recall that specifically, but if you have
18 something to show me.

19 MR. MARKS: I would like to move SF-23.

20 ALJ WOLFE: Is there any objection?

21 MR. CROCKETT: No, Your Honor.

22 ALJ WOLFE: SF-23 is admitted.

23 (SF-23 was admitted.)

24 Q BY MR. MARKS: You have before you a document
25 that has been marked as Exhibit SF-24.

1 Do you have that?

2 A. Yes.

3 Q. And what does this appear to be?

4 A. It's a utility complaint from the Arizona
5 Corporation Commission, the consumer services it looks
6 like.

7 Q. Have you seen this before?

8 A. I believe so, yes.

9 Q. All right. What is the date of the complaint
10 form?

11 A. 11/20/07.

12 Q. And then a little bit down the page it says,
13 "Nature of complaint."

14 What does it say after that?

15 A. There is some redacted information, but it says
16 "Complaint through Steve Olea."

17 Q. Who is Steve Olea?

18 A. Steve is the -- I think his title is assistant
19 utility director of the Corporation Commission.

20 Q. And then after that it says, "Customer has a
21 billing dispute with utility, and water has been
22 disconnected at his business"; is that correct?

23 A. Yes.

24 Q. And that would indicate that that date of
25 November 20, 2007 is reasonably accurate for the date that

1 the water was turned off for the second time; is that
2 correct?

3 A. I don't have any reason to dispute that, no.

4 MR. MARKS: I move SF-24, Your Honor.

5 ALJ WOLFE: Is there any objection?

6 MR. CROCKETT: No, Your Honor.

7 ALJ WOLFE: SF-24 is admitted.

8 (SF-24 was admitted.)

9 Q. BY MR. MARKS: Mr. Tompsett, did you turn the
10 water back on in response to this complaint?

11 A. There is a few pages here; give me a few minutes.

12 Q. Uh-huh.

13 A. Yeah, it looks like a page back somebody at the
14 ACC entered a note that says, "Voicemail from
15 Brian Tompsett confirming receipt of complaint and
16 voicemail requiring service be restored while complaint in
17 process. Water was restored this morning at Commission's
18 request."

19 Apparently I was in a place where my cell phone
20 wasn't working well. And that was 11/21/07.

21 Q. So you have an initial turn-off approximately
22 November 6th. At some point it was turn back on, a
23 subsequent turn-off based -- and if you read further down
24 here -- a subsequent -- I should say it's the previous
25 page -- a subsequent turn-off on or about November 20th

1 and then a turn-back-on on November 21; correct?

2 A. I don't see the turn-off on the 20th. Oh, that
3 is the original date?

4 Q. I think we agreed it was on or about the 20th.

5 A. Yeah.

6 Q. It's not clear to me what the exact date is, but
7 it appears to be very close to that.

8 Would you accept that?

9 A. Yes.

10 MR. CROCKETT: And, Your Honor, if I could get
11 some clarification.

12 Where does the November 6th date appear for a
13 turn-off?

14 MR. MARKS: Should I answer?

15 ALJ WOLFE: Yes.

16 MR. MARKS: If you would look back, Mr. Crockett,
17 to SF-23, the attached e-mail -- the forwarded e-mail at
18 the bottom.

19 MR. CROCKETT: Okay.

20 MR. MARKS: Did I move SF-24?

21 ALJ WOLFE: Yes. It was admitted.

22 MR. MARKS: Thank you.

23 Q. BY MR. MARKS: Mr. Tompsett, I just provided you
24 a copy of what has been marked as Exhibit SF-25.

25 Do you have that in front of you?

1 A. Yes.

2 Q. Could you identify that, please?

3 A. I'm sorry. It's dated March 5, 2009; re line is,
4 "Johnson Utilities, LLC's responses to Swing First Golf,
5 LLC's Fifth Set of Data Requests." It says it's per the
6 Docket No. WS-02987A-08-0180. That is the rate case.

7 Q. I would like you to turn to the attachment,
8 please.

9 A. Let me read this, please.

10 Okay.

11 Q. Point A asks you -- well, first of all, I'm
12 referencing your revised response to data request 1.3,
13 which we previously admitted into evidence. And there was
14 a note there on 1.3 -- and I will refer back to 1.3 in a
15 minute -- but there is a note there that said, "Credits
16 were given the end of 2007 and beginning of 2008 to adjust
17 for incorrect billing rate for Customers A and B."

18 Are you with me?

19 A. Yes.

20 Q. And question A specifically said, "For each of
21 the months January 2007 through June 2008, what rate was
22 actually billed to Customer B?"

23 Do you see that?

24 A. Yes.

25 Q. And Customer B, we agreed, was the San Tan

1 Heights Homeowners Association; is that correct?

2 A. That is what I recall, yes.

3 Q. And your response was, that the commodity rate
4 billed to Customer B for the months January 2007 through
5 June 2008 was \$3.75 per thousand gallons; is that correct?

6 A. That's the response, correct.

7 Q. Can you find again Exhibit SF-17?

8 And while you are looking, I will move SF-25.

9 ALJ WOLFE: Is there any objection to SF-25?

10 MR. CROCKETT: No objection.

11 ALJ WOLFE: SF-25 is admitted.

12 (SF-25 was admitted.)

13 THE WITNESS: Okay. SF-17 exhibit?

14 Q. BY MR. MARKS: Yes, sir.

15 A. Yes.

16 Q. And the note that I was referring to there is a
17 note -- it's the same note that appears on SF-17, "Credits
18 were given the end of 2007 and the beginning of 2008 to
19 adjust for an incorrect billing rate for Customers A and
20 B"; correct?

21 A. Yes, that is what it says on both.

22 Q. So Customer B did not take any effluent in 2006;
23 is that correct?

24 A. It doesn't look like we have a record of it in
25 '06.

1 Q Okay. And then in 2007 there is effluent usage
2 in all but March of 2007; is that correct?

3 A For Customer B?

4 Q Customer B.

5 A Looking at SF-17, page 2, the March '07 use is
6 zero, but April of '07 utilities looks to be double, so
7 it's probably -- March and April are probably, my
8 assumption would be, in that same bill. And we don't have
9 Customer B's bills here that I'm aware of.

10 Q If you could grab SF-18 again, to save you doing
11 some math.

12 A Okay. I have SF-18.

13 Q And I believe you agreed that the column for San
14 Tan HOA for 2007, that these were accurate, that the
15 numbers on 17 had been carried over to 18 correctly; is
16 that right?

17 A Yes.

18 Q And would you accept subject to check that the
19 total usage by the homeowners association in 2007 was
20 57.2860 gallons?

21 A Yes, assuming that math is correct.

22 Q That is up to Bill Gates.

23 A But my point -- I wasn't making an assumption on
24 the total at all. I think what I said was that it appears
25 that the March '07 use for Customer B was included in the

1 bill for, it appears to be, April '07. So the assumption
2 was that March and April were both billed in April.

3 Q Okay. So we had approximately 57 million
4 gallons, according to your two data responses, billed to
5 the homeowners association at \$3.75 per thousand gallons,
6 that you subsequently corrected; is that right?

7 A I don't know if that is correct or not. It says
8 there was a correction. It doesn't say -- I don't see the
9 volume of effluent on there, what the math is done at.

10 Q Well, let's parse this then.

11 You agreed that the math looks right on the total
12 consumption on Exhibit SF-18, correct, for the homeowners
13 association?

14 A The total for?

15 Q For 2007.

16 A Yes, bearing any mismatch.

17 Q If you go back to SF-25.

18 A Okay.

19 Q If you would read for the record your response C.

20 A Okay. Rate case proceeding data request response
21 5.1C?

22 Q Correct.

23 A Says, "The bill credit provided to Customer B on
24 November 12th, 2007 was \$130,395.80 and the bill credit
25 provided on January 8, 2008, was \$48,909.38."

1 Q And I don't have a calculator with me, but that
2 is approximately \$179,000?

3 A I have one at your suggestion.

4 Yeah, the total credit in 5.1C will be
5 \$179,305.18.

6 Q Thank you. And then in part D you explain how
7 you calculated the bill credit for Customer B. You could
8 either read that or paraphrase it, if you would like.

9 A In 5.1D response says, "The bill credit for
10 Customer B were calculated by taking the difference
11 between the \$3.75 per thousand gallons and the effluent
12 tariff rate of 62 cents per thousand gallons and
13 multiplying that difference by number of gallons used. A
14 corresponding adjustment was also made to transaction
15 privilege taxes for Customer B."

16 MR. MARKS: Your Honor, I think I am losing it at
17 the end of the day. Did I move SF-25?

18 ALJ WOLFE: Yes, SF-25 has been admitted.

19 MR. MARKS: Let me write that down.

20 THE WITNESS: I have a bunch of open exhibits
21 here. Which ones are we done with? I have got 18, 25,
22 23, 17, 21, 22, and 24.

23 Q BY MR. MARKS: Why don't you put all of those
24 away with the exception of SF-25.

25 Do you want to take a short break? Could we take

1 a short break while he gets organized?

2 ALJ WOLFE: If you would like to, we can take a
3 10-minute break and come back in ten.

4 MR. MARKS: Thank you.

5 (Whereupon, a recess was taken from 3:54 p.m.
6 until 4:04 p.m.)

7 ALJ WOLFE: Let's go back on the record.

8 Mr. Marks.

9 MR. MARKS: Yes, I have two housekeeping things,
10 Your Honor. I just want to double-check. My records are
11 that all except SF-14 were either admitted or you took
12 administrative notice of; is that correct?

13 ALJ WOLFE: That's correct.

14 MR. MARKS: Thank you.

15 The other thing, Your Honor, as I am looking over
16 what I have left, I have gotten through the time-consuming
17 pieces, but I have a number of smaller subjects that I
18 want to go over, but it doesn't look like I will finish
19 this afternoon. So if you want to take a break at some
20 point when I have finished a subject, I certainly won't
21 object to that.

22 ALJ WOLFE: I was planning on us probably
23 adjourning around 4:40 or 4:45.

24 Does that give everybody an idea? Would that
25 allow you to get further? Do you have a proposal?

1 MR. MARKS: No. I just wanted to make you aware
2 of that.

3 ALJ WOLFE: Well, as far as the witness order, we
4 do have a time certain for Mr. Ashton to testify on Monday
5 at 1:00 p.m. And then I will go back to my witness order
6 unless there is an objection. And then if we are not
7 finished with Mr. Tompsett, resume with them and then go
8 to Mr. Bourassa. And then we would move on to Ms. Rowell
9 and then Mr. Rigsby, Mr. Scott and Mr. Michlik.

10 Is that acceptable to anyone?

11 (No response.)

12 ALJ WOLFE: Okay. That was going off subject
13 since you raised it.

14 Go ahead, and we will do how much we can until
15 about 4:40.

16 MR. MARKS: Thank you. And I will try to let you
17 know when I am changing subjects here. My only
18 preference, Your Honor, is not to quit in the middle.

19 ALJ WOLFE: Exactly. So I will honor that, and
20 just keep that in mind as you look at the clock.

21 MR. MARKS: Okay. Thank you.

22 Q BY MR. MARKS: Mr. Tompsett, I have placed before
23 you what has been marked as SF-26.

24 You have seen this?

25 MR. CROCKETT: Your Honor, we will object to

1 questioning on this exhibit. This is a pending matter.
2 It's an open litigation matter between Swing First Golf
3 and Johnson Utilities.

4 I'm not the attorney that represents Johnson
5 Utilities in this matter. Mr. Marks is the attorney that
6 represents Swing First Golf, and we don't believe it would
7 be appropriate for him to question Mr. Tompsett on this
8 litigation that is active litigation without
9 Mr. Tompsett's counsel present.

10 MR. MARKS: Your Honor, this is a document that
11 is a -- it's taken from the court's files. I believe that
12 it's admissible for that reason.

13 As to whether to cross-examine Mr. Tompsett or
14 not on things that are in this complaint, think
15 Mr. Crockett -- well, I don't have a good answer for
16 Mr. Crockett, so I would accept it being admitted for what
17 it says, and I would agree that there would be no
18 cross-examination of the witness on this.

19 ALJ WOLFE: Mr. Crockett, would you stipulate to
20 the admission of this for the purpose of demonstrating the
21 existence of the complaint?

22 MR. CROCKETT: If it is admitted for purposes of
23 demonstrating that there is a -- this pending lawsuit
24 between Swing First Golf and Johnson Utilities, I do not
25 object to that.

1 MR. MARKS: Your Honor, I need a little bit more
2 than that. I need just that it is for the allegations
3 that are being made against Swing First and Mr. Ashton. I
4 need the complaint to be included so that the allegations
5 themselves are part of the record.

6 ALJ WOLFE: And I believe that that is part of
7 the complaint.

8 MR. CROCKETT: Well, the allegations are
9 contained in the complaint, but to the extent that
10 Mr. Marks is looking for Mr. Tompsett to comment on
11 anything in this complaint, without his legal counsel,
12 that I would not agree to.

13 ALJ WOLFE: And I don't think that that is what
14 Mr. Marks is asking for.

15 Is it?

16 MR. MARKS: No. I'm willing -- I thought we were
17 agreeing and then I thought we weren't agreeing. I'm just
18 asking that it be admitted. It says what it says, and I
19 will not ask the witness any questions about it.

20 ALJ WOLFE: It will be admitted, and there won't
21 be any questioning on this. It's not allowed without
22 Mr. Tompsett's attorney being present.

23 So SF-26 is admitted.

24 (SF-26 was admitted.)

25 Q BY MR. MARKS: Mr. Tompsett, I have before you a

1 two-page document marked Exhibit SF-27.

2 MR. CROCKETT: Your Honor, I will raise the same
3 objection with regard to this exhibit. It pertains to a
4 pending litigation matter between Johnson Utilities and
5 some defendants. And Johnson Utilities is represented by
6 other counsel in that matter, who obviously is not here
7 today.

8 So to the extent Mr. Marks is looking at asking
9 questions about this litigation, I have the same
10 objection.

11 MR. MARKS: The only questions I had, Your Honor,
12 would be for Mr. Tompsett to confirm that this, in fact,
13 is the defamation lawsuit that we previously discussed and
14 that these are the defendants.

15 ALJ WOLFE: Mr. Crockett?

16 MR. CROCKETT: Well, I don't know that -- does
17 this identify -- it does identify defendants.

18 I guess the -- we would admit or we would agree
19 to admitting this exhibit to show the existence of this
20 lawsuit, and if the document itself identifies the
21 plaintiff and the defendants --

22 MR. MARKS: It did not state what the subject
23 matter of the lawsuit is.

24 MR. CROCKETT: Well, then if Mr. Marks would like
25 to, you know, introduce a copy of a complaint, like he has

1 done on this one, that would be fine. But I don't want
2 Mr. Tompsett testifying at all as to this lawsuit or what
3 the counts are or --

4 MR. MARKS: I'm not asking those questions,
5 Mr. Crockett. I only want to ask him if this is the
6 lawsuit that he previously -- if this is the lawsuit that
7 we previously discussed.

8 MR. CROCKETT: If he starts those -- if he starts
9 into questions about it -- I think the better way would be
10 for Mr. Marks to introduce a copy of the complaint, and
11 it's a public document that says what it says.

12 MR. MARKS: Your Honor, this is a public record.
13 I just want to confirm -- have Mr. Tompsett confirm that
14 this -- that I have the right document.

15 MR. CROCKETT: And perhaps Mr. Marks could
16 introduce this document through one of his witnesses.

17 ALJ WOLFE: I don't think he has any of these --
18 he has -- none of these named defendants on this piece of
19 paper have filed testimony.

20 Is that what you are suggesting? That he should
21 have those people appear as a witness for Swing First
22 Golf?

23 MR. CROCKETT: No. What I'm suggesting, I guess,
24 is that Mr. Ashton, perhaps, could discuss how it was that
25 Mr. Marks came to have this document and authenticate it

1 that way, and then it could be introduced as an exhibit
2 for the existence of this litigation.

3 ALJ WOLFE: And I would think that you would
4 probably make an objection that could probably be
5 sustained if you were to try to do that through
6 Mr. Ashton. Mr. Ashton isn't named, at least here, as a
7 defendant or involved in this lawsuit.

8 Do you know enough about this to stipulate?

9 MR. CROCKETT: I do not know enough about it
10 because in asking Mr. Tompsett to stipulate to the
11 contents of the complaint --

12 MR. MARKS: I'm not asking that.

13 ALJ WOLFE: No.

14 MR. CROCKETT: I don't have the complaint in
15 front of me to even see what the counts are in the
16 complaint. So he is asking Mr. Tompsett to stipulate to
17 something that he has described as the defamation lawsuit,
18 and we don't have a document here in front of us, a
19 complaint to look at, like we did with SF-26.

20 ALJ WOLFE: Mr. Marks, why is it that you don't
21 have a copy of the complaint?

22 MR. MARKS: They are not available, Your Honor,
23 on their web site, and it would have required -- I don't
24 remember the date I pulled this off. It looks like
25 April 10, 2009. It would have been a drive down to Pinal

1 County courthouse. I was in the middle of a rate case at
2 the time and did not have an opportunity to drive down
3 there.

4 ALJ WOLFE: And is this complaint the same one
5 that was the subject of a data request to Johnson to
6 produce copies of it, that you asked questions that was
7 the subject of our procedural conference back in December
8 or January?

9 MR. MARKS: The docket number was identified in a
10 subsequent data response from Swing First -- from Johnson
11 Utilities to Swing First Golf, but it did not -- I want to
12 be fair; it did not state that it was -- I don't believe
13 it did state that it was the defamation lawsuit.

14 I can go about this a different way, just let's
15 see if this works.

16 Q. BY MR. MARKS: Let's put aside Exhibit SF-27 for
17 now, Mr. Tompsett.

18 You have stated that there is a defamation
19 lawsuit pending against several customers as a result of,
20 I think we characterized it as a public protest; is that
21 correct?

22 A. I believe we testified to that yesterday
23 sometime.

24 Q. Is one of the defendants Bambi Sandquist, to your
25 knowledge?

1 A. There has been a suit filed against
2 Bambi Sandquist and other defendants.

3 Q. Is another one of these defendants
4 Kristen Fisher?

5 A. I don't recall.

6 Q. How about John Fisher?

7 A. Again, I don't recall specifically.

8 Q. How about Dave Gress or Gina Gress?

9 A. Possibly Gina, yes.

10 Q. To your knowledge, is there more than one lawsuit
11 pending against either Bambi Sandquist or Gina Gress by
12 Johnson Utilities?

13 A. Not that I'm aware of, no.

14 MR. MARKS: Your Honor, I renew my motion to move
15 SF-27 based on the foundation that was just provided by
16 this witness.

17 ALJ WOLFE: Do you plan to question the witness
18 any more on this?

19 MR. MARKS: I'm done.

20 ALJ WOLFE: SF-27 is admitted.

21 (SF-27 was admitted.)

22 Q. BY MR. MARKS: Mr. Tompsett, are you aware of any
23 other utility in the state of Arizona that has ever sued a
24 customer for defamation?

25 A. No, not that I'm aware of. But I also haven't

1 looked into the matter either.

2 Q Are you aware of any other utility in the United
3 States that sued a customer for defamation?

4 A Not aware of any, nope.

5 Q Johnson Utilities is a -- is the monopoly water
6 and wastewater provider within its CC&N, isn't it?

7 A I would think that is fair, yes.

8 Q Your customers don't have a choice who they buy
9 water from, do they?

10 A If they want water provided by the potable water
11 system and they are within our CC&N then they either are
12 provided water by us, by Johnson Utilities, or they haul
13 water in some of the areas.

14 Q But within say, for example, the -- I'm
15 forgetting names -- the San Tan Heights subdivision that
16 we talked about before -- I'm sorry the Pecan Ranch --
17 Pecan --

18 What was the subdivision that we talked about
19 before where the protest occurred?

20 A Oh, actually the protesters were from the --
21 well, I'm not exactly sure. We had talked about a protest
22 from the Pecan Creek North Homeowners Association.

23 Q I'm going to write that down this time.

24 A And the caveat is that we don't serve water to
25 that subdivision.

1 Q Wastewater only?

2 A Yes.

3 Q But within your -- and that was my next question.

4 Within your CC&N where you are certificated to
5 provide wastewater services, do customers have a choice
6 whether they receive their wastewater service -- if they
7 want to receive wastewater service?

8 A We do have areas within our CC&N that provide
9 their own water. There are also areas within our existing
10 CC&N that have septic tanks. They provide their own
11 wastewater service.

12 Q But they can't get that service from any other
13 provider other than basically self-service; is that
14 correct?

15 A That would be correct, yes, sir.

16 Q Now, how is Johnson Utilities damaged as a result
17 of this so-called defamation?

18 MR. CROCKETT: Objection; Your Honor. That gets
19 into the litigation.

20 MR. MARKS: I haven't seen the complaint, Your
21 Honor. I'm only asking him a question, and the basis for
22 this, Your Honor, is that I believe this is a frivolous
23 lawsuit, as I said in my opening statement, that was
24 intended to chill the protest and also chill the
25 opportunity to speak to the media.

1 And I'm asking for -- if there was any -- if
2 there were any resulting damages to the utility as a
3 result of this protest.

4 ALJ WOLFE: I will sustain the objection.

5 Q BY MR. MARKS: May I ask another question?

6 Do you think you will sell any less water as a
7 result of the protest?

8 A I have no idea.

9 Q You think it's likely? You must have some idea.

10 A I think it's extremely likely that the protest
11 had a damaging effect on the utility.

12 Q And you sold less water as a result?

13 MR. CROCKETT: Objection; sold less water?

14 MR. MARKS: Less water.

15 MR. CROCKETT: Less water. I'm sorry.

16 I think that has been asked and answered, Your
17 Honor.

18 MR. MARKS: No.

19 MR. CROCKETT: I think the company asked if he
20 would sell any less water because of the protest, and
21 Mr. Tompsett's answer was he didn't know.

22 MR. MARKS: No, his answer was different than
23 that, Your Honor.

24 ALJ WOLFE: Mr. Marks, was your question in the
25 past tense?

1 MR. MARKS: Yes.

2 ALJ WOLFE: I thought so. It was a different
3 question.

4 You may answer.

5 THE WITNESS: Would you repeat the question or
6 read it back?

7 ALJ WOLFE: Yes, we can read it back.

8 Q BY MR. MARKS: As a result of the protest, do you
9 have any evidence that you sold less water within your
10 CC&N?

11 A I think that I had answered it. It would be
12 almost impossible to determine if we sold less water on a
13 system-wide basis, but I do believe that it had a damaging
14 effect to the utility's reputation and name.

15 Q I'm just asking about water sales.

16 And do you think that your -- you had any less
17 wastewater revenue as a result of the protest?

18 A Well, going back to the water question also,
19 between the newspaper -- there was the newspaper article
20 that said that people are quoted as saying, I'm not
21 drinking their water, I'm going to buy it somewhere else
22 because of that protest. So I don't know if that is
23 evidence or not.

24 MR. CROCKETT: Your Honor, again, I continue to
25 be very nervous about this. We are getting into areas

1 that potentially relate to --

2 ALJ WOLFE: The witness answered that question.

3 We will wait until there is another question, if there is
4 one. I don't know how far this needs to go.

5 MR. MARKS: I'm going to turn to another subject
6 matter here, Your Honor.

7 Q BY MR. MARKS: I have provided to you a document
8 that has been marked as Exhibit SF-28.

9 Do you have it?

10 A Yes.

11 Q Can you describe that, please.

12 A Yeah. If you let me read it here. The top is an
13 e-mail from Mr. Ashton to me and various others, but let
14 me read the content.

15 Okay.

16 Q First of all, Mr. Tompsett, this was taken from
17 your e-mail account; is that correct?

18 A Yes. Yes.

19 Q And I would like to start at the beginning of the
20 e-mail chain, which is on the second page of the exhibit,
21 if you would, please.

22 A I'm sorry. You are starting where?

23 Q It's the end. It's the beginning of the e-mail
24 chain, which obviously comes in reverse order. So it's on
25 the second page.

1 A. From December?

2 Q. Yes.

3 A. Okay.

4 Q. First of all, who is December Davis?

5 A. She is in our accounting department.

6 Q. And you identified her as the CFO or chief
7 financial officer for the company before; is that correct?

8 A. I believe that is her title, yes.

9 Q. And this e-mail is from Dave Ashton; is that
10 correct?

11 A. Yes.

12 Q. And it's dated February 4th of 2008; is that
13 correct?

14 A. Yes.

15 Q. And in this e-mail Mr. Ashton reports that the
16 lake on the 18th hole of the golf course was flooded with
17 effluent water.

18 Do you see that?

19 A. Yes, that is what it says.

20 Q. And it says, "We have taken photos, which we will
21 forward shortly."

22 Do you see that?

23 A. Yes.

24 Q. And do you see that he has asked Johnson
25 Utilities to stop delivery of water until the lake level

1 is low enough to accept more?

2 A. Yes.

3 Q. And then he then asks you -- it says he will let
4 you know when that is; is that correct?

5 A. Yes.

6 Q. Okay. And then moving up the chain, you replied
7 to Mr. Ashton directly; is that correct?

8 A. Yes.

9 Q. And you replied two days later on February 6th;
10 is that right?

11 A. Yes.

12 Q. Okay.

13 A. I'm not sure what day of the week that was. I'm
14 not sure -- Monday is February 4th, so Wednesday is
15 February 6th. Probably, yeah.

16 Q. And I would like you to read the second sentence
17 or second paragraph of your e-mail into the record,
18 please.

19 A. "You have now"?

20 Q. Yes.

21 A. It says, "You have now filed a formal complaint
22 with the Arizona Corporation Commission alleging, among
23 other things, service interruptions. You even requested
24 relief requesting that 'The Commission to order Utility to
25 continue providing service during the pendency of this

1 matter.' We were served with that complaint Friday,
2 February 1, 2008. Now a mere three days later you now
3 demand that 'we stop the delivery of water.' Which way do
4 you want it?"

5 Q And for the record, "we stopped delivery of
6 water" is all capitals and contained within quotes; is
7 that correct?

8 A Yes.

9 Q And then "which way do you want it" is underlined
10 and bold faced; is that correct?

11 A That's correct.

12 Q And then the top e-mail is from Mr. Ashton that
13 includes photos. And I printed out these photos and
14 attached them to the e-mail. I wonder if you could take a
15 minute to look at the photos.

16 Have you looked at it?

17 A Yes. I didn't know you were waiting on me.

18 Q If you can recall -- well, first of all, did you
19 look at the photographs that were attached to the e-mail
20 when you received it?

21 A I don't recall. I assume I did. These aren't
22 dated. I'm not sure if these were the correct ones or
23 not.

24 MR. MARKS: I would like to move Exhibit SF-28.

25 ALJ WOLFE: Is there any objection?

1 MR. CROCKETT: Your Honor, I do object at this
2 point because we don't know the timing of when these
3 pictures were taken. It appears to be an issue. They are
4 not identified. I think I would like to have an
5 opportunity to address those with Mr. Ashton on
6 cross-examination before we agree that they could be
7 admitted.

8 These e-mails that you have here indicate that it
9 was raining over the weekend, and I don't know. There is
10 nothing to identify the date that these pictures were
11 taken. I would like the opportunity to question
12 Mr. Ashton on them.

13 ALJ WOLFE: You will have that opportunity. I
14 will admit SF-28 with the understanding that the pictures
15 that are attached to it are not dated or labeled. It does
16 show there were attachments, but there may be some
17 question as to whether these are, in fact, the four
18 attachments that are noted.

19 So it will be admitted, and you certainly may
20 cross-examine Mr. Ashton on that issue.

21 (SF-28 was admitted.)

22 MR. MARKS: And one other question on this.

23 Q BY MR. MARKS: The attachments listed are four
24 documents: Water 002.JPG, Water 003.JPG, Water 004.JPG,
25 and Water 005.JPG.

1 Do you see that? That is in the first e-mail.

2 A. Oh, yes. That there were four attachments to the
3 e-mail, yes.

4 Q. And JPEG is a an extension that refers to a
5 photograph; is that correct?

6 A. Yes. They are typically referred to as JPEGs.

7 Q. JPEGs?

8 A. Yes.

9 MR. MARKS: Your Honor, I have one other thing
10 that I would like to cover, just to ask some questions of
11 this witness, to see if he agrees or disagrees.

12 ALJ WOLFE: Okay.

13 MR. MARKS: And I think that will take us up to
14 your 4:40.

15 ALJ WOLFE: That sounds reasonable to me.

16 Q. BY MR. MARKS: Mr. Tompsett, in late 2006 or
17 early 2007, to your knowledge, did George Johnson order
18 Gary Larson to change Swing First's rates for CAP water
19 from 82.7 cents to \$3.75?

20 A. No.

21 Q. I'm sorry?

22 A. No, not to my knowledge.

23 Q. Does Johnson Utilities care if the customer is
24 being overcharged and no one knows about it?

25 A. I would say absolutely. We have a number -- we

1 deal with 25,000-plus accounts every month, that includes
2 other golf courses and other HOAs, and this is the only
3 complaint case we have been dealing with.

4 Q Do you have an employee named Bob that would be
5 involved with golf course -- with the turning on or
6 turning off of the water service, the irrigation water
7 service for Swing First Golf?

8 A I probably have more than one employee named Bob
9 at the utility office.

10 Q But that would be involved with turning service
11 on or off to Swing First Golf?

12 A Possibly, yes.

13 Q Did George Johnson order Gary Larson or any other
14 employee to turn off Swing First's service on November 6,
15 2007?

16 A I think the e-mail we had, one of these
17 documents, I told David the water had been shut off.

18 Q Was that at the order of George Johnson?

19 A No, not that I recall. It was for nonpayment.

20 Q And did an employee turn -- subsequently turn the
21 water back on and refill the golf course lake?

22 A Based on the documents we saw earlier, it got
23 turned on somewhere between -- it was turned off, I think
24 it was November 6th.

25 Was that the document we saw?

1 Q That is what I saw.

2 A And it was turned on again and it was turned off
3 again on November 20th or 21st. So it must have been
4 turned back on in there somewhere. But I haven't seen
5 anything, any documents on that.

6 Q I think you testified that you have been an
7 employee of Mr. Johnson's -- or let me put it another
8 way -- or you have directly reported to Mr. Johnson for
9 seven years and that you previously worked with
10 Mr. Johnson for another five years before that; is that
11 correct?

12 A Yes. That's correct. I worked for a consulting
13 firm before that.

14 Q So you know him pretty well?

15 A I think so.

16 Q And if he was ordered to testify at the
17 Commission, do you expect that he would tell the truth to
18 the Commission?

19 A Yes.

20 Q Now, are you aware -- do you think employees of
21 Johnson Utilities are afraid of Mr. Johnson?

22 MR. CROCKETT: Objection. That is argumentative.

23 MR. MARKS: I'm asking for an opinion. I'm not
24 asking --

25 MR. CROCKETT: And it assumes facts not in

1 evidence.

2 ALJ WOLFE: Overruled.

3 You may answer.

4 THE WITNESS: Could I have that question again,
5 please?

6 Q BY MR. MARKS: Are employees at Johnson Utilities
7 afraid of Mr. Johnson?

8 A I wouldn't think afraid is a good term in any
9 business. They have a healthy respect for the man in
10 charge of the company. I would say, yes.

11 Q Are you afraid of George Johnson?

12 A No.

13 Q Would employees of Johnson Utilities do what
14 George Johnson told them to do even if they knew it was
15 illegal?

16 A I don't think so, no.

17 Q One last question: Do you think the
18 commissioners are afraid of George Johnson?

19 A No. I don't think so.

20 MR. MARKS: Thank you. That gets me to the end
21 of the spot. I can move on or stop at your discretion
22 here.

23 ALJ WOLFE: I think we will stop so people can
24 get their things cleared out and start their weekend.

25 We will start again on Monday at 1:00 p.m. or as

1 soon thereafter as practical. There is another proceeding
2 that is going on, and they will be moving out of here
3 after the public comment is over. So it depends on how
4 much public comment there is.

5 So we will see you on Monday.

6 MR. MARKS: Thank you, Your Honor. Have a good
7 weekend.

8 (The hearing recessed at 4:38 p.m.)

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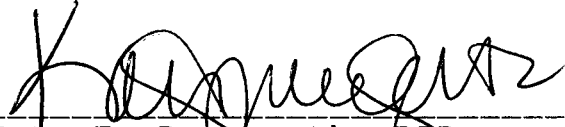
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1 STATE OF ARIZONA.)
2) ss.
3 COUNTY OF MARICOPA)
4
5
6

7 I, KATE E. BAUMGARTH, RPR, Certified Reporter
8 No. 50582, for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 5th day of May, 2009.
15
16
17
18

19 
20 _____
21 Kate E. Baumgarth, RPR
22 Certified Reporter, No. 50582
23
24
25